

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Rodney Dewayne Jones, #97157-071,)	Civil Action No.: 8:14-766-MGL
)	
Petitioner,)	
)	
v.)	<u>OPINION AND ORDER</u>
)	
M. Travis Bragg,)	
)	
Respondent.)	
)	

On March 5, 2014,¹ Petitioner Rodney Dewayne Jones (“Petitioner”), an inmate at the Federal Correctional Institution, Bennettsville, South Carolina, filed the instant petition for a *writ of habeas corpus* pursuant to 28 U.S.C. § 2241. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pre-trial proceedings and a Report and Recommendation (“Report”).

On March 26, 2014, the Magistrate Judge issued a Report and Recommendation recommending that the court dismiss Petitioner's petition without prejudice and without requiring Respondent to file an Answer or return as the claims raised by Petitioner are not proper § 2241 grounds. (ECF No. 14.) The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. *Id.* at 9. Plaintiff has filed no objections and the time for doing so expired on April 14, 2014, 2013.

¹This filing date reflects that the envelope containing the petition was stamped as having been received on March 5, 2014, by the Federal Correctional Inst., Bennettsville, SC. (ECF No.1-2.) *Houston v. Lack*, 487 U.S. 266 (1988) (holding prisoner's pleading is considered filed when filed with prison authorities for forwarding to the district court).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error. Accordingly, the court adopts and incorporates the Report and Recommendation (ECF No. 14) by reference into this order. It is therefore ORDERED that action is DISMISSED without prejudice and without requiring respondent to file a return.

CERTIFICATE OF APPEALABILITY

The law governing certificates of appealability provides that: “(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right,” and “(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).” 28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this Court's assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the

Court is likewise debatable. *See Miller–El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484,(2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir.2001). In this case, the Court finds that the legal standard for the issuance of a certificate of appealability has not been met.

IT IS SO ORDERED.

s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
April 22, 2014.