

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

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|--|---|------------------------|
| Ellis Jerome Swinton, Sr., a/k/a Ellis J. Swinton, Sr., |) | C.A. No. 8:15-4148-PMD |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | <u>ORDER</u> |
| |) | |
| Charleston County, Ross Foley, Frederick Overton, |) | |
| |) | |
| |) | |
| Defendants. |) | |
| |) | |

The above-captioned case is before this court upon the magistrate judge's recommendation that defendant Charleston Count be dismissed, and the remaining defendants' motion to transfer venue be granted. Because petitioner is pro se, this matter was referred to the magistrate judge.¹

This Court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate

¹Pursuant to the provisions of Title 28 United States Code, § 636(b), and Local Rule 73.02(B)(2)(f), D.S.C., the magistrate judge is authorized to review pretrial matters and submit findings and recommendations to this Court.

court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).² No objections have been filed to the magistrate judge's report. Moreover, the report and recommendation sent to plaintiff was returned as undeliverable with a notation stating "NO LONGER IN ADC CUSTODY," and no change of address had been given as directed by the court in its order issued on October 30, 2015.

A review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. For the reasons articulated by the magistrate judge, it is hereby **ordered** that plaintiff's claims against defendant Charleston County are **dismissed** for failure to prosecute, and the remaining defendants' motion to transfer venue is **granted, and this action is transferred to the District of Arizona.**

ORDERED, that the magistrate judge's report and recommendation is adopted as the order of this Court.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

December 28, 2016
Charleston, South Carolina

²In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.