

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

Brandon Adrian Moore,	)	
	)	C/A No. 8:16-526-MBS
Plaintiff,	)	
	)	
vs.	)	
	)	<b>ORDER AND OPINION</b>
Sheriff Rick Clark, Lt. Kristi Leopard,	)	
	)	
Defendants.	)	
	)	

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At the time of underlying events, Plaintiff Brandon Adrian Moore was a pretrial detainee housed at Pickens County Detention Center in Pickens, South Carolina. Plaintiff, proceeding pro se, filed a complaint on February 18, 2016, asserting that Defendants deprived him of his constitutional right to freedom of religion. Plaintiff brings this action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling.

On May 10, 2016, Defendants filed a motion for summary judgment. On May 12, 2016, the Magistrate Judge issued an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), advising Plaintiff of the summary judgment procedures and the possible consequences if he failed to respond adequately. On May 20, 2016, the envelope containing Plaintiff's copy of the Roseboro order was returned to the Office of the Clerk of Court marked "RETURN TO SENDER - NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD." On June 20, 2016, the Magistrate Judge issued an ordering informing Plaintiff that he had until July 20, 2016, in which to file a response to the motion for summary judgment. Plaintiff was cautioned that if he failed to respond, the action could be dismissed with prejudice for failure to prosecute and for failure to

comply with the court's orders. See Fed. R. Civ. P. 41(b). On July 18, 2016, the envelope containing Plaintiff's copy of the June 30, 2016, order was returned to the Clerk of Court marked "RETURN TO SENDER - ATTEMPTED - NOT KNOWN - UNABLE TO FORWARD."

On July 27, 2016, the Magistrate Judge issued a Report and Recommendation in which she recommended that the complaint be dismissed pursuant to Rule 41(b). On August 8, 2016, the envelope containing Plaintiff's copy of the Report and Recommendation was returned to the Clerk's Office marked "RETURN TO SENDER - NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD."

It was determined that Plaintiff now is incarcerated at Trenton Correctional Institution in Trenton, South Carolina. Therefore, on August 19, 2016, the Clerk's Office re-sent to Plaintiff copies of the Roseboro order; the Magistrate Judge's June 30, 2016, order; the Report and Recommendation; and an address update form. On September 6, 2016, Plaintiff returned to the Clerk's Office a completed address update form. Plaintiff has not, however, responded to Defendant's motion for summary judgment or filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id.

The court has thoroughly reviewed the record. It appears that Plaintiff has abandoned the within action. The court adopts the Magistrate Judge's recommendation that the case be dismissed.

Accordingly, the within action is dismissed, *without prejudice*, pursuant to Rule 41(b).

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
Senior United States District Judge

Columbia, South Carolina

November 30, 2016

**NOTICE OF RIGHT TO APPEAL**

**Plaintiff is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**