

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

Charles C. Jenkins, #275218,)	
)	C/A No. 9:07-0883-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Jon Ozmint, Dennis Patterson, George T.)	
Hagan, John R. Pate, and Kathy Hudson,)	
in their individual and official capacities,)	
)	
Defendants.)	
_____)	

At the time of the underlying events, Plaintiff Charles C. Jenkins was an inmate in custody of the South Carolina Department of Corrections housed at the Allendale Correctional Institution in Fairfax, South Carolina. On April 2, 2007, Plaintiff, proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983 alleging that his constitutional rights have been violated in various respects. Plaintiff sought prospective relief only and not monetary relief.

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 Bristow Marchant for pretrial handling. On May 16, 2007, the Magistrate Judge stayed the case pending the resolution of another case before the court dealing with the same issue raised by Plaintiff.

On August 23, 2010, Defendants filed a motion to lift stay. Also on August 23, 2010, Defendants filed a motion to dismiss on the grounds that Plaintiff had been released from custody. Defendants asserted that dismissal is appropriate because (1) Plaintiff’s claim for prospective relief is moot, and, in the alternative, (2) that Plaintiff failed to keep the court apprised of his current address, and thus the case should be dismissed for failure to prosecute. On August 27, 2010, the Magistrate Judge issued a Report and Recommendation in which he recommended that the within

complaint be dismissed for failure to prosecute. The Magistrate Judge noted that Plaintiff had been advised by order filed April 5, 2007 of his responsibility to keep the court advised in writing of his address and that the case could be dismissed for violating the court's April 5, 2007 order. On September 7, 2010, Plaintiff's copy of the Report and Recommendation was returned to the Office of the Clerk of Court marked "Released - Return to Sender - Insufficient Address - Unable to Forward." The court has not been apprised by Plaintiff of his current address.

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). The court is charged with making a de novo determination of any portions of the Report and Recommendation 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.

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within action is dismissed *with prejudice* pursuant to Rule 41(b) for failure to prosecute.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina
September 16, 2010

NOTICE OF RIGHT TO APPEAL

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