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

Marshall Mack,	)	Civil Action No. 9:10-cv-2511-RMG
Petitioner,	)	
vs.	)	**ORDER**
The State of South Carolina,	)	
Respondent.	)	

This matter is before the court on Petitioner's *pro se* application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2241.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant, for pre-trial proceedings and a Report and Recommendation ("Report"). On November 4, 2010, the Magistrate Judge issued a Report recommending that this matter be dismissed without prejudice and without issuance and service of process on Respondent. (Dkt. No. 8). The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed his objections on November 22, 2010. (Dkt. No. 10).

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 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).

After reviewing the Record *de novo* and considering Petitioner's objections, this Court agrees with the conclusions of the Magistrate Judge. Petitioner's action is dismissed without prejudice in order to allow the Petitioner to correctly file his claim, along with any other claims, in a § 2254 action, either after exhaustion of state remedies, or claiming waiver of exhaustion to allow consideration of all grounds available for relief under § 2254. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Petitioner offers no argument that convinces this court that the Magistrate Judge erred in his analysis. Therefore, the petition is dismissed without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

November 30 2010
Charleston, South Carolina