

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

Paul Benjamin Goist,)	Case No 9:17-cv-434-RMG
)	
Petitioner,)	
)	ORDER AND OPINION
v.)	
)	
B.J. Meeks, Warden, FCI Williamsburg,)	
)	
)	
Respondent.)	
)	

Petitioner, proceeding *pro se*, filed this petition for writ of habeas corpus under 28 U.S.C. § 2241. This matter is before the Court on the Report and Recommendation (“R. & R.”) of the Magistrate Judge recommending that the petition for writ of habeas corpus be dismissed without prejudice and without requiring Respondent to file a return. (Dkt. No. 8.) For the reasons set forth below, this Court adopts the R. & R. as the order of the Court and dismisses the habeas petition without prejudice and without requiring Respondent to file a return.

I. Legal Standards

a. Pro Se Pleadings

This Court liberally construes complaints filed by *pro se* litigants to allow the development of a potentially meritorious case. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. *Weller v. Dep’t of Social Services*, 901 F.2d 387 (4th Cir. 1990).

Under 28 U.S.C. § 1915, an indigent litigant may commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against

possible abuses of this privilege, the statute allows a district court to dismiss a case upon a finding that the action fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A claim based on a meritless legal theory may be dismissed *sua sponte* under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

b. Magistrate's Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the 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.* Where the plaintiff fails to file any specific objections, “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,” *see Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

II. Discussion

Petitioner, an inmate at the Federal Correctional Institution in Williamsburg, filed this habeas petition under 28 U.S.C. § 2241 to challenge his career offender sentence enhancement. (Dkt. No. 1 at 4, 20.) The Magistrate Judge has adequately summarized the facts relevant to this Petition, so this Court need not repeat them here. (Dkt. No. 8 at 2-6.) The Magistrate has explained that this action is subject to summary dismissal because Petitioner was convicted in federal court and his petition does not satisfy the § 2255 savings clause. For these reasons,

Petitioner must seek habeas relief from his convictions and sentence through § 2255, not through a Petition filed under § 2241. (Dkt. No. 8 at 3-5.) Petitioner has not filed any objections to the R. & R. This Court finds that the Magistrate has correctly applied the controlling law to the facts of this case.

III. Conclusion

For the reasons set forth above, this Court adopts the R. & R. as the order of the Court and dismisses the habeas petition without prejudice and without requiring Respondent to file a return.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

May 31, 2017
Charleston, South Carolina