

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

MARCO BURTON,

Petitioner,

v.

Civil Action No. **3:14CV289**

ERIC WILSON,

Respondent.

MEMORANDUM OPINION

Marco Burton, a federal inmate proceeding *pro se*, filed this petition for habeas corpus under 28 U.S.C. § 2241 (“§ 2241 Petition,” ECF No. 1) asserting that he was improperly sentenced under the Armed Career Criminal Act and requesting to be resentenced. On November 5, 2015, the Magistrate Judge recommended that Respondent’s Motion to Dismiss be granted because the controlling authority in the United States Court of Appeals for the Fourth Circuit did not permit Burton to use § 2241 to challenge his sentence. The Court advised Burton that he could file objections within fourteen (14) days after the entry of the Report and Recommendation. Burton has not responded.

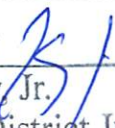
“The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court.” *Estrada v. Witkowski*, 816 F. Supp. 408, 410 (D.S.C. 1993) (citing *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). This Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “The filing of objections to a magistrate’s report enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985). In the absence of a specific written objection, this

Court may adopt a magistrate judge's recommendation without conducting a de novo review. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

There being no objections, the Report and Recommendation will be ACCEPTED and ADOPTED. The Motion to Dismiss (ECF No. 7) will be GRANTED. The action will be DISMISSED FOR LACK OF JURISDICTION.¹

An appropriate Final Order will accompany this Memorandum Opinion.

Date: 12/21/15
Richmond, Virginia

/s/ 
John A. Gibney, Jr.
United States District Judge

¹ In recommending the dismissal of Burton's § 2241 Petition, the Court relied, in part, on the decision of *United States v. Surratt*, 797 F.3d 240 (4th Cir. 2015). On December 2, 2015, the United States Court of Appeals for the Fourth Circuit voted to rehear that case *en banc*. *United States v. Surratt*, No. 14-6851 (4th Cir. Dec. 2, 2015). If in *Surratt*, the Fourth Circuit concludes an inmate can utilize 28 U.S.C. § 2241 to challenge his or her sentence, Burton may file a new 28 U.S.C. § 2241 petition.