

INDEX TO APPENDICES

Appendix A order Denying rehearing copy court of appeals

Appendix B order Dismissing civil action District Court copy

Appendix C mandate copy Rule 41(c) FR of AP court of Appeals

Appendix D copy ncic Report main sheet That say at the time of the false charge That I was not a convicted felon.

Appendix E copy of The knowing willfully with corruptly malice intent false Affidavit That was filed in The UNITED STATES Federal courts systems

Appendix F copy of court docket Dismissing charges That was false

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6678

OLANDIO RAY WORKMAN,

Plaintiff - Appellant,

v.

ROBERT PERRY, Investigator; JAMES P. WALSH, Lawyer,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Greenville. R. Bryan Harwell, District Judge. (6:17-cv-03416-RBH)

Submitted: October 23, 2018

Decided: October 26, 2018

Before NIEMEYER, KING, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Olandio Ray Workman, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Olandio Ray Workman appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his 42 U.S.C. § 1983 (2012) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Workman v. Perry*, No. 6:17-cv-03416-RBH (D.S.C. June 1, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: October 26, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6678
(6:17-cv-03416-RBH)

OLANDIO RAY WORKMAN

Plaintiff - Appellant

v.

ROBERT PERRY, Investigator; JAMES P. WALSH, Lawyer

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix A

FILED: November 27, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6678
(6:17-cv-03416-RBH)

OLANDIO RAY WORKMAN

Plaintiff - Appellant

v.

ROBERT PERRY, Investigator; JAMES P. WALSH, Lawyer

Defendants - Appellees

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge King, and Judge Wynn.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix B

UNITED STATES DISTRICT COURT
 for the
 District of South Carolina

Olandio Ray Workman)		
Plaintiff)		
v.)		
Robert Perry; James P. Walsh)	Civil Action No.	6:17-cv-3416-RBH
Defendant)		

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one*):

the plaintiff (*name*) _____ recover from the defendant (*name*) _____ the amount of _____ dollars (\$_____), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (*name*) _____ recover costs from the plaintiff (*name*) _____.

other: The complaint is dismissed without prejudice and without issuance of service of process.

This action was (*check one*):

tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

tried by the Honorable _____ presiding, without a jury and the above decision was reached.

decided by the Honorable R. Bryan Harwell.

Date: June 4, 2018

CLERK OF COURT

s/Kathy Rich, Deputy Clerk

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Olandio Ray Workman,)	Civil Action No.: 6:17-cv-03416-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Robert Perry, <i>Investigator</i> ;)	
James P. Walsh, <i>Lawyer</i> ,)	
)	
Defendants.)	
)	

Plaintiff Olandio Ray Workman, a state pretrial detainee proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983. *See* ECF No. 1. The matter is before the Court for consideration of Plaintiff's objections to the Report and Recommendation ("R & R") of United States Magistrate Judge Kevin F. McDonald, who recommends summarily dismissing this action without prejudice.¹ *See* ECF Nos. 13 & 15.

Standard of Review

The Magistrate Judge makes only a recommendation to the Court. The Magistrate Judge's recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court must conduct a de novo review of those portions of the R & R to which specific objections are made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1); Fed. R. Civ. 72(b).

The Court must engage in a de novo review of every portion of the Magistrate Judge's report

¹ The Magistrate Judge issued the R & R in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.).

to which objections have been filed. *Id.* However, the Court need not conduct a de novo review when a party makes only “general and conclusory objections that do not direct the [C]ourt to a specific error in the [M]agistrate [Judge]’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of specific objections to the R & R, the Court reviews only for clear error, *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and the Court need not give any explanation for adopting the Magistrate Judge’s recommendation. *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983).

Discussion²

Plaintiff, presently detained at the Greenville County Detention Center on state charges,³ has filed a § 1983 complaint against Defendant Robert Perry, who is a police investigator involved in Plaintiff’s ongoing state criminal case, and Defendant James Walsh, who is an attorney defending Perry in another § 1983 case filed by Plaintiff in this Court, *see Workman v. Perry*, No. 6:17-cv-02136-RBH (D.S.C.) (“the Related Case”). *See* ECF No. 1. Plaintiff’s allegations relate in part to an affidavit given by Defendant Perry in support of a motion for summary judgment in the Related Case; Plaintiff alleges Defendant Perry gave “false, and misleading, incomplete testimony” in that affidavit.⁴ *See* ECF No. 1 at pp. 5, 7–9. The Magistrate Judge has reviewed Plaintiff’s complaint and recommends summarily

² The R & R summarizes the factual and procedural background of this case, as well as the applicable legal standards.

³ *See Workman v. Dir. of Greenville Cty. Det. Ctr.*, No. 6:17-cv-03046-RBH-KFM, 2017 WL 8785509, at *2 (D.S.C. Dec. 6, 2017) (summarizing Plaintiff’s five pending state charges), *adopted by*, 2018 WL 1730948 (D.S.C. Apr. 10, 2018). *See generally Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (“[F]ederal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.”).

⁴ In the Related Case, Defendant Walsh filed a motion for summary judgment on behalf of Defendant Perry; an affidavit given by Defendant Perry was one of the exhibits. *See Workman v. Perry*, No. 6:17-cv-02136-RBH, at ECF Nos. 29 & 29-1 (D.S.C.). The Magistrate Judge has entered an R & R recommending granting Defendant Perry’s motion for summary judgment. *See id.* at ECF No. 65.

dismissing this action because (1) Plaintiff cannot maintain a civil action for perjury, (2) no diversity jurisdiction exists for any libel or slander claims, and (3) Plaintiff has failed to state a viable due process claim. *See R & R* at pp. 2–3. Furthermore, the Magistrate Judge recommends declining to automatically give Plaintiff leave to amend because amendment would not cure the defects in his complaint. *See id.* at p. 3. Plaintiff objects to the Magistrate Judge’s recommendations. *See Pl.’s Objs.* [ECF No. 15].

First, Plaintiff appears to argue his claim for perjury is actually a claim for civil contempt. *See Pl.’s Objs.* at p. 1. However, “[t]here is no such thing as an independent cause of action for civil contempt,” *Finn v. Schiller*, 72 F.3d 1182, 1188 (4th Cir. 1996) (quoting *Blalock v. United States*, 844 F.2d 1546, 1550 (11th Cir. 1988)). Rather, “civil contempt is a device used to coerce compliance with an *in personam* order of the court which has been entered in a pending case.” *Blalock*, 844 F.2d at 1550 (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949), and *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 441–42 (1911)). Accordingly, Plaintiff cannot maintain a claim for civil contempt.

Plaintiff next contends he has stated a due process claim by asserting Defendants “alter[ed] [the] NCIC⁵ sheet” relating to Plaintiff’s prior convictions.⁶ *See Pl.’s Objs.* at p. 2. However, as the Magistrate Judge explains, Plaintiff is essentially attacking statements made by Defendant Perry in the context of Plaintiff’s ongoing state criminal prosecution, and Plaintiff’s dispute with such statements

⁵ NCIC is an abbreviation for the National Crime Information Center, which “is a computerized index of criminal justice information available to, and updated by, federal, state, and local law enforcement agents.” *United States v. McDowell*, 745 F.3d 115, 118 (4th Cir. 2014).

⁶ Similarly, in his complaint, Plaintiff alleges “Officer Perry and James Walsh altered the NCIC sheet [and] violated my 14th amendment right.” ECF No. 1 at p. 8. Plaintiff appears to be referring to a police report (prepared by Defendant Perry) that discusses the basis for charging Plaintiff. *See id.* (citing *Workman v. Perry*, No. 6:17-cv-02136-RBH, at ECF No. 29-1 at p. 30 (D.S.C.)).

does not implicate due process concerns here. *See R & R* at p. 3.

Plaintiff further asserts that “not anywhere did I say libel and slander” in his complaint, and instead seeks to bring a “1st amendment retaliation claim” based on Defendants’ filing a “false and altered misleading incomplete report on court document in a civil action.” *See Pl.’s Obj.* at p. 2. To the extent Plaintiff claims Defendants violated his First Amendment rights by making filings in the Related Case (such as Defendant Perry’s affidavit), such an allegation does not state a First Amendment retaliation claim. *See generally Martin v. Duffy*, 858 F.3d 239, 249 (4th Cir. 2017) (listing the elements of a § 1983 First Amendment retaliation claim).⁷

Finally, Plaintiff objects to the Magistrate Judge’s recommendation that the Court should decline to automatically give Plaintiff leave to amend. *See Pl.’s Obj.* at p. 2. However, the Court agrees with the Magistrate Judge that Plaintiff cannot cure the defects in his complaint by mere amendment. *See generally Goode v. Cent. Virginia Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015); *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066 (4th Cir. 1993). The Court therefore declines to automatically give Plaintiff leave to amend and will dismiss this action instead.

Conclusion

For the foregoing reasons, the Court overrules Plaintiff’s objections, adopts the R & R [ECF No. 13], and **DISMISSES** this action *without prejudice and without issuance and service of process*.

⁷ Although not discussed by the Magistrate Judge, the Court notes “witness absolute immunity applies to testimony given in a judicial proceeding.” *Brice v. Nkaru*, 220 F.3d 233, 239 n.6 (4th Cir. 2000); *see also Chapman v. Hurley*, No. 6:17-cv-01072-TMC-KFM, 2017 WL 9289391, at *2 (D.S.C. May 5, 2017), *adopted by*, 2018 WL 459412 (D.S.C. Jan. 18, 2018) (“[An] absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it. The preliminary steps leading up to a formal judicial proceeding can include pleadings, letters between counsel in litigation, depositions, briefs[,] *or informal affidavits sworn before someone other than an officer of the court.*” (alteration in original, internal citations omitted, and emphasis added)). Thus, the statements made in Defendant Perry’s affidavit are privileged because they were made in the Related Case and are reasonably related to it.

IT IS SO ORDERED.

Florence, South Carolina
June 1, 2018

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

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

Olandio Ray Workman, #103852-1263)	C/A No. 6:17-3416-RBH-KFM
)	
Plaintiff,)	
)	
)	Report and Recommendation
vs.)	
)	
Robert Perry, Investigator,)	
James P. Walsh, Lawyer,)	
Defendants.)	
)	

The plaintiff, proceeding *pro se*, seeks relief pursuant to 42 U.S.C. § 1983. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in cases filed under 42 U.S.C. § 1983, and submit findings and recommendations to the District Court.

BACKGROUND

The plaintiff is a pretrial detainee at the Greenville County Detention Center. He brings this action alleging that the defendants committed perjury and violated his civil rights by "willfully giving false, misleading, or incomplete testimony under oath" in this court, and in other courts associated with his pending state criminal case¹ (comp. at 5, 7-9). The defendants are Robert Perry, a deputy with the Greenville County Sheriff's Office, and James Walsh, Perry's attorney of record in a separate civil case filed by the plaintiff against Perry in this court, C/A No. 6:17-2136-RBH-KFM. In his complaint here, the plaintiff

¹It appears the plaintiff has pending charges for domestic violence of a high and aggravated nature, kidnapping, possession of a weapon during a violent crime, and possession of a firearm or ammunition by a convicted felon (*Workman v. Perry*, C.A. No. 6:17-cv-2136-RBH-KFM, doc. 29-1 at 18-20). A federal court may take judicial notice of the contents of its own records. See *Aloe Creme Labs., Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir. 1970).

appears to allege that certain information provided by the defendants in C/A No. 6:17-2136-RBH-KFM was false and defamatory, and in violation of 18 U.S.C. §§ 1621 and 1622, which are federal criminal statutes prohibiting perjury. He also claims that by providing this false information, the defendants are violating his due process rights (*Id.* at 5). He seeks monetary damages from both defendants and he wants them removed from their jobs (*Id.* at 10).

DISCUSSION

The plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). As a *pro se* litigant, the plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). However, even under this less stringent standard, the *pro se* pleading remains subject to summary dismissal. The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

The plaintiff’s complaint is subject to dismissal, as he cannot maintain a civil action for perjury in this court. See *Cabbagestalk v. Hardin*, 2014 WL 2881930, (D.S.C., June 25, 2014) *citing White v. Stacher*, 2006 WL 1207857 at *6 (D.S.C., May 1, 2006) (“[T]here are no civil actions for perjury [or] subornation of perjury”). The federal perjury statutes he cites, 18 U.S.C. §§ 1621 and 1622, are criminal laws rather than civil. To the extent the

plaintiff is attempting to make out claims for libel or slander, this court lacks jurisdiction to consider them. See *Vander Linden v. Wilbanks*, 128 F. Supp. 2d 900, 904 (D.S.C. 2000) (explaining that the Fourth Circuit has found that libel and slander claims are state law claims and, absent diversity jurisdiction, should be heard by state courts). Because all of the parties are South Carolina residents, diversity jurisdiction is not present, and the plaintiff's claims cannot be heard based on diversity.

As for his due process claims, the plaintiff has failed to state a viable cause of action. The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const, amend. XIV, § 1. It is clear from the complaint that Perry's alleged false statements were made in the course and context of the plaintiff's pending criminal prosecution, and the plaintiff's objection to this evidence against him there does not amount to a due process concern here.

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, Plaintiff's complaint is subject to dismissal as it fails to state a claim upon which relief may be granted against the defendants. In the undersigned's view, Plaintiff could not cure any of the defects in his claims against the defendants by amending the complaint. See *Goode v. Cent. Va. Legal Aid Soc'y*, 807 F.3d 619, 623 (4th Cir. 2015). Therefore, the undersigned recommends that the district judge decline to automatically give Plaintiff leave to amend his complaint and that this action be dismissed *without prejudice*.

s/ Kevin F. McDonald
United States Magistrate Judge

April 19, 2018
Greenville, South Carolina

Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, 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.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

**Additional material
from this filing is
available in the
Clerk's Office.**