MICHAEL OWEN HARRIOT, Plaintiff - Appellant v. DOJ, Jeff Sessions-Former U.S. Attorney General; IRENE JOSEY, Former U.S. Attorney; STACEY D HAYNES, AUSA; SCARLET A. WILSON, Former AUSA; ROBERT WAIZENHOFFER, FBI Special Agent; RODNEY PRITCHARD, FBI Special Agent; CHARLES KLATZ, FBI Special Agent; FBI; UNKNOWN INS AGENTS, Department of Homeland Security; UNKNOWN SHERIFFS, Richland County Sheriff Department, Defendants - Appellees

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2020 U.S. App. LEXIS 8312

No. 19-7344

March 16, 2020, Filed

Editorial Information: Prior History

Harriot v. DOJ, 788 Fed. Appx. 226, 2019 U.S. App. LEXIS 37990 (4th Cir. S.C., Dec. 20, 2019)

Counsel **{2020 U.S. App. LEXIS 1}**MICHAEL OWEN **HARRIOT**, Plaintiff - Appellant, Pro se, Estill, SC.

Judges: Judge King, Judge Floyd, and Judge Harris.

Opinion

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Floyd, and Judge Harris.

Appendix C

Appendix A

MICHAEL OWEN HARRIOT, Plaintiff - Appellant, v. DOJ, Jeff Sessions-Former U.S. Attorney General; IRENE JOSEY, Former U.S. Attorney; STACEY D HAYNES, AUSA; SCARLET A. WILSON, Former AUSA; ROBERT WAIZENHOFFER, FBI Special Agent; RODNEY PRITCHARD, FBI Special Agent; CHARLES KLATZ, FBI Special Agent; FBI; UNKNOWN INS AGENTS, Department of Homeland Security; UNKNOWN SHERIFFS, Richland County Sheriff Department, Defendants - Appellees.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

788 Fed. Appx. 226; 2019 U.S. App. LEXIS 37990

No. 19-7344

December 17, 2019, Submitted

December 20, 2019, Decided

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeal from the United States District Court for the District of South Carolina, at Columbia. (3:18-cv-03164-JFA). Joseph F. Anderson, Jr., Senior District Judge.Harriot v. DOJ, 2019 U.S. Dist. LEXIS 155590 (D.S.C., Sept. 11, 2019)

Disposition:

AFFIRMED.

Counsel Michael Owen **Harriot**, Appellant, Pro se.

Judges: Before KING, FLOYD, and HARRIS, Circuit Judges.

Opinion

{788 Fed. Appx. 227} PER CURIAM:

Michael Owen **Harriot** appeals the district court's order accepting the recommendation of the magistrate judge and dismissing under 28 U.S.C. § 1915(e)(2)(B) (2012) his complaint filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971). We have reviewed the record and find no reversible error. Accordingly, we deny Harriot's motion for transcripts at government expense and affirm based on the district court's holding that Harriot's complaint is barred by the statute of limitations. ***Harriot*** *v. DOJ*, No. 3:18-cv-03164-JFA, 2019 U.S. Dist. LEXIS 155590 (D.S.C. Sept. 12, 2019). 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

Appendix B

Michael Owen Harriot, #96039-071 Plaintiff, vs. DOJ, Jeff Sessions, Former U.S. Attorney General; Irene Josey, Former U.S. Attorney; Stacey D. Haynes, AUSA; Scarlet A. Wilson, Former AUSA; Robert Waizenhofer, FBI Special Agent; Rodney Pritchard, FBI Special Agent; Charles Klatz, FBI Special Agent; Unknown I.N.S. Agents, Department of Homeland Security, and Unknown Sheriffs, Richland County Sheriff Department, Defendants.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

2019 U.S. Dist. LEXIS 155590

C/A No. 3:18-3164-JFA-SVH

September 11, 2019, Decided

September 12, 2019, Filed

Editorial Information: Subsequent History

Affirmed by **Harriot** v. DOJ, 2019 U.S. App. LEXIS 37990 (4th Cir. S.C., Dec. 20, 2019)

Editorial Information: Prior History

Harriot v. DOJ, 2018 U.S. Dist. LEXIS 227684 (D.S.C., Nov. 29, 2018)

Counsel **{2019 U.S. Dist. LEXIS 1}**Michael Owen **Harriot**, Plaintiff, Pro se, Estill, SC.

Judges: Joseph F. Anderson, Jr., United States District Judge.

Opinion

Opinion by: Joseph F. Anderson, Jr.

Opinion

ORDER

I. INTRODUCTION

Michael Owen **Harriot**, ("Plaintiff"), a prisoner proceeding pro se and in forma pauperis, brings this action claiming a violation of his constitutional rights pursuant to 42 U.S.C. § 1983. (ECF No. 1). Plaintiff seeks monetary damages and injunctive relief. (ECF No. 1). (ECF No. 1). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), the case was referred to the Magistrate Judge.

The Magistrate Judge assigned to this action1 prepared a thorough Report and Recommendation ("Report") and opines that Plaintiff's complaint should be dismissed without issuance and service of process. (ECF No. 16). The Report sets forth, in detail, the relevant facts and standards of law on this matter, and this Court incorporates those facts and standards without a recitation.

II. LEGAL STANDARD

The Court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with

instructions.{2019 U.S. Dist. LEXIS 2} *See* 28 U.S.C. § 636(b)(1). However, a district court is only required to conduct a *de novo* review of the specific portions of the Magistrate Judge's Report to which an objection is made. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); *Carniewski v. W. Virginia Bd. of Prob. & Parole*, 974 F.2d 1330 (4th Cir. 1992). In the absence of specific objections to portions of the Report of the Magistrate, this Court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

III. DISCUSSION

The Report recites the factual and procedural background giving rise to this action in detail, which is incorporated by reference. Briefly, Plaintiff alleges that under § 1983, he was illegally arrested without probable cause or a warrant and was illegally questioned and detained. (ECF No. 1). Further, the Court did not have jurisdiction over him because he had not committed any federal offenses. (ECF No. 1). Plaintiff seeks monetary damages and injunctive relief. (ECF No. 1).

A. Plaintiff's Claims Related to his Conviction and Sentence

The Magistrate Judge correctly opines that Plaintiff's claims concerning his alleged false arrest and imprisonment are barred by the holding in *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). In *Heck*, the Supreme Court held that "in order to recover damages from allegedly unconstitutional conviction or imprisonment, or for other harm whose unlawfulness{2019 U.S. Dist. LEXIS 3} would render a conviction or sentence invalid,...a § 1983 Plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." The holding in *Heck* also applies to declaratory and injunctive relief if a judgment in the Plaintiff's favor would necessarily imply the invalidity of the conviction. See *Edwards v. Balisok*, 520 U.S. 641, 648, 117 S. Ct. 1584, 137 L. Ed. 2d 906 (1997) (*Heck* bars declaratory judgment action challenging validity of state criminal conviction).

As the District Court, we must "consider whether judgment in favor of the Plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the Plaintiff can demonstrate the conviction or sentence has already been invalidated." *Heck*, 512 U.S. at 487. The Report submits that a judgment in Plaintiff's favor on his false arrestment and imprisonment claims would necessarily imply the invalidity of his subsequent conviction. (ECF No. 16). However, in his Objections to the Report, Plaintiff states that *Heck* does not bar his claims because he was not "arrested{2019 U.S. Dist. LEXIS 4} with a valid facially warrant." (ECF No. 19). *Heck* does not distinguish between cases in which Plaintiffs were or were not arrested with a valid warrant. Rather, *Heck* applies when a Plaintiff brings a § 1983 action alleging the unconstitutionality of his conviction or imprisonment and seeks monetary damages or injunctive relief. As Plaintiff has asserted claims for false arrest and imprisonment under § 1983 and seeks millions of dollars in damages and injunctive relief, the Magistrate Judge properly applied *Heck* to Plaintiff's complaint. By applying *Heck*, Plaintiff's claims are barred unless Plaintiff can demonstrate or allege that he has successfully challenged his convictions. Although Plaintiff filed objections to the Report, he was unable to demonstrate that his conviction has been successfully challenged. (ECF No. 19). Therefore, the Court accepts the recommendation of the Magistrate Judge and dismisses these claims.

B. Statute of Limitations

The Magistrate Judge correctly opines that Plaintiff's civil rights claims are barred by South Carolina's statute of limitations. (ECF No. 16). Under South Carolina law, the statute of limitations for

a personal injury is three years. See S.C. Code Ann. § 15-3-530(5). As the Report**{2019 U.S. Dist. LEXIS 5}** states, Plaintiff's complaint concerns events that occurred in July 1999 and as such, the limitations period for Plaintiff to file suit against Defendants has expired. *See Finch v. McCormick Corr. Ins.*, C/A No. 4:11-858-JMC-TER, 2012 U.S. Dist. LEXIS 96631, 2012 WL 2871665, at 3 (D.S.C. June 15, 2012).

In the Objections, Plaintiff submits that a cause of action under § 1983 accrues when "the Plaintiff possesses sufficient facts about the harm done to him that reasonably inquiry will reveal his cause of action. See United State v. Kubrick, 444 U.S. 111, 122-24, 100 S. Ct. 352, 62 L. Ed. 2d 259 (1979)." (ECF No. 19). However, Plaintiff's reliance on case law is misplaced because *Kubrick* refers to the statute of limitations for claims arising under the Federal Tort Claims Act. *U.S. v. Kubrick*, 444 U.S. 111, 100 S. Ct. 352, 353, 62 L. Ed. 2d 259 (1979). Whereas, Plaintiff's cause of action arises under § 1983. The Supreme Court has made clear that "federal law looks to the law of the state in which the cause of action arose" to determine the applicable statute of limitations. *See Wallace v. Kato*, 549 U.S. 384, 387, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007)." Accordingly, South Carolina statute of limitations law applies, and Plaintiff's claims are time barred. Therefore, the Court accepts the recommendation of the Magistrate Judge and Plaintiff's civil rights claims are dismissed.

C. Futility of Amendment

The Magistrate Judge recommends Plaintiff not be allowed to amend his complaint because any amendment would be futile. (ECF No. 16).**{2019 U.S. Dist. LEXIS 6}** In his Objections, Plaintiff refers to Federal Rule of Civil Procedure 15(a) which states "a party may amend its pleading once as a matter of course within 21 days of serving it or ... 21 days after service of responsive pleading." (ECF No. 19). Plaintiff argues that "no written consent" is needed at this point to amend the complaint. The Court disagrees as the complaint was filed June 29, 2018, and as such, is well passed the 21-day period of allowance. (ECF No. 1).

Further, Plaintiff argues that "justice so requires" an amendment because Plaintiff "need[s] to add more defendants and give the Defendants Pritchard, Klatz, and other fair notice of what their cause of action that injur[ed] the Plaintiff" and "amend[ing] complaint is necessary to cure deficiencies." (ECF No. 19). However, Courts should deny leave to amend when the amendment would be futile. *See Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999). "An amendment is futile if the claim would still be dismissed after amendment." *See United States ex rel. Wilson v. Kellogg Brown Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008). Because Plaintiff's claims for false arrest and imprisonment are barred by Heck and his civil rights claims are barred by the statute of limitations, the Court agrees with the Magistrate Judge that any amendment would be futile. Therefore, the Court accepts the Magistrate Judge's**{2019 U.S. Dist. LEXIS 7}** recommendation and denies Plaintiff leave to amend the complaint.

IV. CONCLUSION

After carefully reviewing the applicable laws, the record in this case, the Report, and the objections thereto, this Court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. Accordingly, this Court **adopts** the Magistrate Judge's Report and Recommendation. (ECF No.16). Thus, Plaintiff's complaint is dismissed without issuance and service of process and Plaintiff is denied leave to amend his complaint.

IT IS SO ORDERED.

September 11, 2019

Columbia, South Carolina

/s/ Joseph F. Anderson, Jr.

Joseph F. Anderson, Jr.

United States District Judge

Footnotes

1

The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). 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. *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 those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

Appendix B

Michael Owen Harriot, #96039-071, Plaintiff, vs. DOJ, Jeff Sessions, former U.S. Attorney General; Irene Josey, Former U.S. Attorney; Stacy D. Haynes, AUSA; Scarlet A. Wilson, Former AUSA; Robert Waizenhofer, FBI Special Agent; Rodney Pritchard, FBI Special Agent; Charles Klatz, FBI Special Agent; FBI; Unknown I.N.S. Agents, Department of Homeland Security, and Unknown Sheriffs, Richland County Sheriff Department, Defendants.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

2018 U.S. Dist. LEXIS 227684

C/A No.: 3:18-3164-JFA-SVH

November 29, 2018, Decided

November 29, 2018, Filed

Editorial Information: Subsequent History

Adopted by, Dismissed by **Harriot** v. DOJ, 2019 U.S. Dist. LEXIS 155590 (D.S.C., Sept. 11, 2019)

Editorial Information: Prior History

Harriot v. DOJ, 2018 U.S. Dist. LEXIS 202965 (D.S.C., Nov. 29, 2018)

Counsel **{2018 U.S. Dist. LEXIS 1}**Michael Owen **Harriot**, Plaintiff, Pro se, Estill, SC.

Judges: Shiva V. Hodges, United States Magistrate Judge.

Opinion

Opinion by: Shiva V. Hodges

Opinion

REPORT AND RECOMMENDATION

Michael Owen **Harriot** ("Plaintiff"), proceeding pro se and in forma pauperis, is an inmate incarcerated at Federal Correctional Institution Estill in the custody of the Federal Bureau of Prisons. He filed this action against the Department of Justice ("DOJ"), former United States Attorney General Jeff Sessions, former United States Attorney Irene Josey ("Josey"), Assistant United States Attorney ("AUSA") Stacy D. Haynes, former AUSA Scarlet A. Wilson ("Wilson"), the Federal Bureau of Investigation ("FBI"), FBI Special Agent Robert Waizenhofer ("Waizenhofer"), FBI Special Agent Rodney Pritchard, FBI Special Agent Charles Klatz, unknown Immigration and Naturalization Service ("INS") Agents, Department of Homeland Security, and unknown Richland County Sheriff Deputies, alleging a violation of his constitutional rights.

Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge. For the reasons that follow, the undersigned recommends that**{2018 U.S. Dist. LEXIS 2}** the district judge dismiss the complaint in this case without prejudice and without issuance and service of process.

I. Factual and Procedural Background

Plaintiff argues his constitutional rights were violated related to his arrest in 1999. He alleges he was illegally arrested without probable cause or a warrant and was illegally questions and detained. He alleges the court did not have jurisdiction over him because he had not committed any federal offenses. Plaintiff seeks monetary damages and injunctive relief. *Id.* at 11.

II. Discussion

A. Standard of Review

Plaintiff filed his complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to 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 or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992). 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, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989).

Pro se complaints are held to a less**{2018 U.S. Dist. LEXIS 3}** stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

B. Analysis

1. *Heck* bars Plaintiff's claims related to his conviction and sentence

Plaintiff's claims concerning his alleged false arrest and imprisonment are barred by the holding in *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). In *Heck*, the United States Supreme Court held that to recover damages for imprisonment in violation of the Constitution, the imprisonment must first be successfully challenged:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm whose unlawfulness**{2018 U.S. Dist. LEXIS 4}** would render a conviction or sentence invalid, . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.*Id.* at 486-87. In addressing a damages claim, "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Heck*, 512 U.S. at 487. This is known as the "favorable termination" requirement. *See Wilson v. Johnson*, 535 F.3d 262, 263 (4th Cir.

2008). The preclusive rule in *Heck* likewise bars declaratory and injunctive relief if a judgment in the plaintiff's favor would necessarily imply the invalidity of the conviction. *See Edwards v. Balisok*, 520 U.S. 641, 648, 117 S. Ct. 1584, 137 L. Ed. 2d 906 (1997) (*Heck* bars declaratory judgment action challenging validity of state criminal conviction); *Harvey v. Horan*, 278 F.3d 370, 375 (4th Cir. 2002) (applying *Heck* to claims for injunctive relief), *abrogated on other grounds**{2018 U.S. Dist. LEXIS 5}** by Skinner v. Switzer*, 562 U.S. 521, 131 S. Ct. 1289, 1298-1300, 179 L. Ed. 2d 233 (2011).

Judgment in Plaintiff's favor on his false arrest and imprisonment claims would necessarily imply the invalidity of his subsequent conviction on drug conspiracy charges. *See USA v.* ***Harriot***, No. 3:99-cr-341-MBS-3 (April 30, 2001).1 Because Plaintiff fails to demonstrate or allege he has successfully challenged his convictions, *Heck* bars his claims. The undersigned recommends these claims be summarily dismissed.

2. Statute of Limitations

Plaintiff's civil rights claims are also barred by South Carolina's statute of limitations. *See Wallace v. Kato*, 549 U.S. 384, 387, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007) ("[F]ederal law looks to the law of the State in which the cause of action arose" to determine the applicable statute of limitations); *Burnett v. Grattan*, 468 U.S. 42, 48-49, 104 S. Ct. 2924, 82 L. Ed. 2d 36 (1984). Under South Carolina law, the statute of limitations for a personal injury claim is three years. *See* S.C. Code Ann. § 15-3-530(5). Because the allegations in Plaintiff's complaint concern events that occurred in July 1999, the limitations period for Plaintiff to file suit against Defendants has expired.2 *See Finch v. McCormick Corr. Inst.*, C/A No. 4:11-858-JMC-TER, 2012 U.S. Dist. LEXIS 96631, 2012 WL 2871665, at *3 (D.S.C. June 15, 2012) (granting summary judgment finding claim raised pursuant to 42 U.S.C. § 1983 fell outside the three-year South Carolina statute of limitation), *adopted by* 2012 U.S. Dist. LEXIS 96383, 2012 WL 2871746 (D.S.C. July 12, 2012). Accordingly, the undersigned recommends Plaintiff's**{2018 U.S. Dist. LEXIS 6}** remaining civil rights claims be summarily dismissed.

3. Futility

The undersigned finds Plaintiff cannot cure the deficiencies in his complaint by amendment. Plaintiff has not shown he has successfully challenged his convictions and his civil rights claims are barred by the statute of limitations. Accordingly, any amendment would be futile.

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends that the court dismiss the complaint without issuance and service of process.

IT IS SO RECOMMENDED.

November 29, 2018

Columbia, South Carolina

/s/ Shiva V. Hodges

Shiva V. Hodges

United States Magistrate Judge

Footnotes

1

The court takes judicial notice of Petitioner's prior cases. *See Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("The most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.") (citation omitted).

2

While the statute of limitations is an affirmative defense that is subject to waiver if not timely raised in a responsive pleading, the court is authorized to anticipate clearly-apparent affirmative defenses available to defendants in determining whether, under § 1915, process should be issued. *Todd v. Baskerville*, 712 F.2d 70, 74 (4th Cir. 1983).