

FILED: October 5, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1317
(6:20-cv-00228-HMH)

TITO LEMONT KNOX

Plaintiff - Appellant

v.

ELIZABETH G. MAGERA, US Probation Officer in her Individual and official capacity; SERGIO A. SANCHEZ, Psychiatric in his Individual and official capacity

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and supplemental petitions for rehearing.

Entered at the direction of the panel: Judge Agee, Judge Diaz, and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED**UNITED STATES COURT OF APPEALS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

No. 20-1317

TITO LEMONT KNOX,

Plaintiff - Appellant,

v.

ELIZABETH G. MAGERA, US Probation Officer in her Individual and official capacity; SERGIO A. SANCHEZ, Psychiatric in his Individual and official capacity,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., Senior District Judge. (6:20-cv-00228-HMH)

Submitted: July 21, 2020

Decided: July 23, 2020

Before AGEE, DIAZ, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Tito Lemont Knox, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tito Lemont Knox appeals the district court's orders dismissing his civil rights complaint filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2018). After informing Knox of several pleading deficiencies and allowing him to amend his complaint, the magistrate judge recommended that the complaint as amended be dismissed for failure to state a claim. The magistrate judge further advised Knox that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017); *Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). Although Knox received proper notice and filed timely objections to the magistrate judge's recommendation, he has waived appellate review because, as the district court ruled, the objections were not specific to the particularized legal recommendations made by the magistrate judge. *See Martin*, 858 F.3d at 245 (holding that, "to preserve for appeal an issue in a magistrate judge's report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection" (internal quotation marks omitted)).

Accordingly, we affirm the amended judgment of the district court. 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

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

Tito Knox,)	C/A No. 6:20-228-HMH-PJG
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Elizabeth G. Magera; Sergio A. Sanchez MD,)	
)	
Defendants.)	
)	

Plaintiff, Tito Knox, proceeding *pro se*, filed this civil rights action pursuant to 28 U.S.C. § 1915. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). By order dated January 31, 2020, the court provided Plaintiff the opportunity to file an amended complaint to correct deficiencies identified by the court that would warrant summary dismissal of the Complaint pursuant to § 1915. (ECF No. 10.) Plaintiff filed an Amended Complaint on February 6, 2020. (ECF No. 12.) Having reviewed the Amended Complaint in accordance with applicable law, the court concludes the Amended Complaint still fails to state a viable claim and should be summarily dismissed without prejudice and issuance of service of process.

I. Factual and Procedural Background

In his original complaint, Plaintiff indicated that he brought this action against a federal probation officer and a psychiatrist pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). (Compl., ECF No. 1 at 4.) Plaintiff argued that he was not provided a hearing in his federal criminal trial and, as a result, he must take injections for the rest of his life. (Id. at 5-6.) Plaintiff provided no facts about the named defendants. Plaintiff indicated

he sought damages in this suit because he “could have wrapped this up in 2007.” (*Id.* at 6.) The court’s records indicate that Plaintiff was found not guilty by reason of insanity in a criminal matter in this court in 2007. United States v. Knox, Cr. No. 6:06-269-HMH.

In the Amended Complaint, which is just a typed paragraph of text, Plaintiff again claims that he was denied a hearing in his federal criminal case. (ECF No. 12 at 1.) As to the named defendants, he indicates that he is suing a probation officer, Elizabeth G. Magera, for “illegally supervising” him. (*Id.*) He also claims he is suing a doctor, Sergio A. Sanchez, for giving him “mind altering drugs” that have harsh side effects. (*Id.*)

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Amended Complaint. The Amended Complaint has been filed 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. This statute allows a district court to dismiss the case upon a finding that the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

To state a claim upon which relief can be granted, the plaintiff must do more than make mere conclusory statements. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rather, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. Iqbal, 556 U.S. at 678; Twombly,

550 U.S. at 570. The reviewing court need only accept as true the complaint's factual allegations, not its legal conclusions. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 555.

This court is required to liberally construe *pro se* complaints, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, 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); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions").

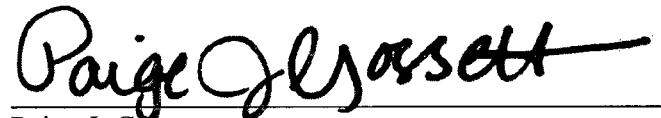
B. Analysis

The court finds that despite having availed himself of the opportunity to cure the deficiencies previously identified by the court, Plaintiff's Amended Complaint should nonetheless be summarily dismissed because it still fails to provide any plausible allegation that he was harmed by the defendants. See Martin v. Duffy, 858 F.3d 239, 247-48 (4th Cir. 2017) (finding the plaintiff's "repeated, ineffective attempts an amendment" suggest further amendment would be futile). Plaintiff asserts that he seeks to sue the defendants for damages pursuant to Bivens, but Plaintiff provides no indication of what federal right he believes the defendants violated. See Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) (establishing a remedy for plaintiffs alleging certain constitutional violations by federal officials to obtain monetary damages in suits against federal officials in their individual capacities). Plaintiff's bare allegations that a probation officer "illegally supervised" him and that a doctor gave him mind altering drugs, fail to plausibly allege that the defendants are liable to him for damages pursuant

to Bivens. See Fed. R. Civ. P. 8 (requiring that a pleading contain “a short and plain statement of the claim showing that the pleader is entitled to relief”); Iqbal, 556 U.S. at 678 (stating Federal Rule of Civil Procedure 8 does not require detailed factual allegations, but it requires more than a plain accusation that the defendant unlawfully harmed the plaintiff, devoid of factual support). Therefore, the Amended Complaint also fails to state a claim upon which relief can be granted.

III. Conclusion

Accordingly, the court recommends that the Amended Complaint be summarily dismissed with prejudice and without issuance and service of process. See Workman v. Morrison Healthcare, 724 F. App’x 280, 281 (4th Cir. 2018) (in a case where the district court had already afforded the plaintiff an opportunity to amend, directing the district court on remand to “in its discretion, either afford [the plaintiff] another opportunity to file an amended complaint or dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order”) (citing Goode v. Cent. Va. Legal Aid Soc’y, Inc., 807 F.3d 619, 630 (4th Cir. 2015)).



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

February 20, 2020
Columbia, South Carolina

*The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”*

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

Tito Knox,)	
)	C.A. No. 6:20-00228-HMH-PJG
Plaintiff,)	
)	
vs.)	OPINION & ORDER
)	
Elizabeth G. Magera; Sergio A. Sanchez)	
MD,)	
)	
Defendants.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Tito Knox (“Knox”), a prisoner proceeding pro se, brought suit against a federal probation officer and a psychiatrist pursuant to Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). In her Report and Recommendation filed on February 21, 2020, Magistrate Judge Gossett recommends that the amended complaint be summarily dismissed with prejudice and without issuance and service of process. (R&R, generally, ECF No. 16.)

Knox filed objections to the Report and Recommendation. (Objs., generally, ECF No. 18.) Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (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. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). Upon review, the court finds that Knox's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. Accordingly, after review, the court finds that Knox's objections are without merit.

Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Gossett's Report and Recommendation and incorporates it herein by reference.

It is therefore

ORDERED that Knox's amended complaint, docket number 12, is summarily dismissed with prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
March 4, 2020

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

United States District Court
DISTRICT OF SOUTH CAROLINA

UNITED STATES OF AMERICA

JUDGMENT OF ACQUITTAL

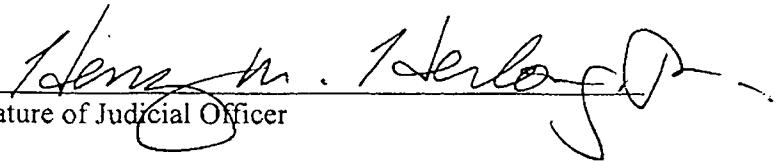
v.

CASE NUMBER: 6:06cr269-1

US Marshal's Number: 13813-171

TITO L KNOX

The Defendant was found not guilty by reason of insanity as to counts 1 and 2. IT IS ORDERED that the Defendant is acquitted. IT IS FURTHER ORDERED that the Defendant, TITO L. KNOX, be committed to a facility for treatment and not released until it is shown that he is not a risk to himself or to others.


Signature of Judicial Officer

Henry M. Herlong, Jr., United States District Judge
Name and Title of Judicial Officer

June 21, 2007

United States District Court

for

District of South Carolina

Petition for Warrant or Summons for Offender Under Supervision**Name of Offender:** Tito L Knox**Case Number:** 6:06CR00269-001**Name of Sentencing Judicial Officer:** The Honorable Henry M. Herlong, Jr., Senior U.S. District Judge**Date of Original Sentence:** June 21, 2007**Original Offense:** Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(c)**Original Sentence:** Conditional Release**Type of Supervision:** Conditional Release**Date Supervision Commenced:** May 19, 2016**Assistant U.S. Attorney:** Max Cauthen**Defense Attorney:** David Plowden**Previous Court Action/Notification(s):** An order was signed by the Honorable Henry M. Herlong, Jr., Senior U.S. District Judge on May 12, 2009 committing the defendant to the Federal Medical Center in Rochester until the director of the facility determined his eligibility for release. On May 19, 2016, the defendant's conditional release began.

On August 25, 2017, a petition for a warrant was requested from the Court due to Mr. Knox refusing his psychiatric medication injection on July 27, 2017, and by failing to attend mental health appointments on August 1, 2017, and August 24, 2017. On August 31, 2017, the Court ordered that Mr. Knox be released to the custody of the U.S. Probation Officer and transported to the physician to receive his medication.

PETITIONING THE COURT To issue a warrant To issue a summons

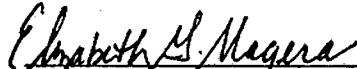
The probation officer believes that the offender has violated the following condition(s) of supervision:

Violation Number**Nature of Noncompliance**

1. *Failure to comply with mental health treatment:* As evidenced by the defendant's refusal to take intramuscular injection of his psychotropic medications as prescribed by his treating physician on August 22, 2019.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 22, 2019



Elizabeth G. Magera
U.S. Probation Officer

Reviewed and Approved By:



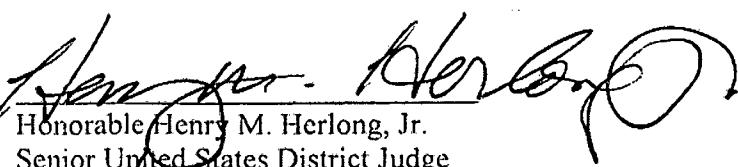
William B. Steadman
Supervising U. S. Probation Officer

THE COURT ORDERS:

- No action.
- The issuance of a warrant.
- The issuance of a summons.
- Other

BOND CONSIDERATION:

- Bond to be set at the discretion of the United States Magistrate Judge.
- No bond to be set.
- Other (specify):


Honorable Henry M. Herlong, Jr.
Senior United States District Judge

8/22/19
Date

OF

35B
OFFENSESLED
SUB-CODE UOF
999/FNGREENVILLE COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

10-2947

54

RECORDS
COPYADULT/
JUVENILEAGENCY I.D.
SCO230000

520

05000079471

CASE NUMBER

INCIDENT TYPE
 FELON IN POSSESSION OF FIREARM (UOF)
 UNLAWFUL CARRY OF A PISTOL
 FOUND CONTRABAND

OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
YES <input checked="" type="checkbox"/>	No <input type="checkbox"/>	YES <input type="checkbox"/>	No <input checked="" type="checkbox"/>	20-Residence/Home
YES <input checked="" type="checkbox"/>	No <input type="checkbox"/>	YES <input type="checkbox"/>	No <input checked="" type="checkbox"/>	20-Residence/Home
YES <input type="checkbox"/>	No <input type="checkbox"/>	YES <input type="checkbox"/>	No <input type="checkbox"/>	

INCIDENT LOCATION (SUBDIVISION, MILL, VILLAGE, APARTMENT AND NUMBER, STREET NAME AND NUMBER)

CLOSEST INTERSECTION

ZIP CODE

29673

BESSIE RD. PIEDMONT

INCIDENT DATE	TIME	TO	DATE	TIME	WEAPON TYPE	TIME ARRIVED	TIME COMPLETED	PATROL DISTRICT
06/13/05	1500		06/13/05	1510	12-HANDGUN	1530	1900	06

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)

GRAHAM, R.T. #880

RESIDENT RACE SEX AGE DAYTIME PHONE

J W M 28 271-5210 W

EVENING PHONE

H W SAME

ADDRESS

4 MCGEE ST.

CITY STATE ZIP CODE

GREENVILLE SC 29601

PATROL DISTRICT

VICTIM'S NAME (LAST, FIRST, MIDDLE)

STATE OF SOUTH CAROLINA

RELATIONSHIP TO SUBJECT RESIDENT RACE SEX AGE DAYTIME PHONE

J = = = 271-5210 W

EVENING PHONE

H W SAME

ADDRESS

4 MCGEE ST.

CITY STATE ZIP CODE

GREENVILLE SC 29601

PATROL DISTRICT

VISIBLE INJURY (VICT. 1) YES NO EXPLAIN:COMPLAINT OF ANY NON-VISIBLE INJURIES: YES NOVICTIM (NO. 1) USING ALCOHOL YES NO UNK DRUGS: YES NO UNK TYPE:TWO-MAN VEH. ONE-MAN VEH. DETECTIVE/BPLASMT. OTHER ALONE ASSISTED J - THIS JURISDICTION S - STATE S - OUT OF STATE U - UNKNOWN

<input type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
<input type="checkbox"/> RUNAWAY	KNOX, TITO LEMONT	B	M	31	10/03/74	511	180	BLK	BRO

 WANTED
107 SAXON DR.SSN: 

<input type="checkbox"/> WARRANT	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.	CITY	STATE	ZIP CODE	PATROL DISTRICT
<input type="checkbox"/> ARREST	SUBJECT (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK TYPE	PIEDMONT	SC	29673	06

<input type="checkbox"/> MISSING	ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DATE/TIME OF OFFENSE	DATE OF ARREST
	Total Arrested: 01	06/13/05 1500	06/13/05

ARRESTEE ARMED YES NO WEAPON TYPE:ARRESTED ON CURRENT OFFENSE CLEARED BY ARREST ON PRIOR OFFENSEJUVENILE DISPOSITION: HANDLED RELEASED REFERRED TO OTHER AUTHORITYON VIEW ARREST SUMMONED CUSTODY

CHARGES		WARRANT #	TICKET #
FELON IN POSSESSION OF FIREARM (BOND \$5000)		H-942602	
UNLAWFUL CARRY OF A PISTOL (BOND \$5000)		I-520686	

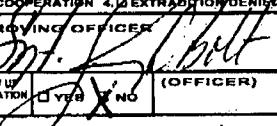
Arrest Location: 659 BESSIE RD. PIEDMONT

*****UOF***** I responded to incident location in reference to a suspicious person, discharging a firearm. Upon arrival I pulled up to Bessie Rd. I observed a B/M laying on the ground near an old white house. The male started crawling on the ground and was running his hand across a string, which was one of many stretched across the ground. I asked what he was doing and he said he was petting a snake. From my location, I could not observe a snake. I asked if he had a gun and he stated that he did have a gun in his truck and pointed toward a red truck near him. He said it was a BB rifle. I asked if he had any other guns and he stated, "No". I removed the gun from the truck and secured it at my car. Unit #753 J. Garner then arrived as my backup officer. He spoke with neighbors. These neighbors were relatives of the male I was talking to. They advised that he had a mental condition and had a handgun on his person and had previously fired it before my arrival, toward the roadway.

JURISDICTION OF THEFT: N/A			JURISDICTION OF RECOVERY: N/A		
<input type="checkbox"/> STOLEN	TAG NUMBER	STATE	YEAR	V.I.N.	VALUE

<input type="checkbox"/> RECOVERED	YEAR	MAKE	MODEL	STYLE	COLOR
<input type="checkbox"/> SUSPECT					

PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial #	Value	ADDITIONAL VEHICLE DESCRIPTION							
									SEIZED	013-Firearms	01	RUGER	BLUED	357 REVOLVER	160-18585	\$400
	SEIZED	013-Firearms	01	UNKNOWN	WOOD/BLUED	PUMP BB RIFLE	r-162004	\$100	SEIZED	011-Drug/Narcotic Equ	02	ROLLING PAPERS/ BOX	Multi-Color	ROLLING PAPERS/ BOX	N/A	\$10

ADMIN	SUBJECT IDENTIFIED			SUBJECT LOCATED			<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADMIN. CLOSED <input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> EX-CLEARED UNDER 18		<input type="checkbox"/> UNFOUNDED <input type="checkbox"/> ARRESTED 18 AND OVER <input type="checkbox"/> EX-CLEARED 18 AND OVER	
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH 2. NO PROSECUTION 3. VICTIM DECLINES COOPERATION 4. EXTRADITION DENIED 5. JUVENILE NO ARREST										
REPORTING OFFICER (s)		DATE	06/13/05	UNIT #/Star #	C25	APPROVING OFFICER		DATE	06/13/05	Unit #/Star #
GRAHAM, R.T. #880						FOLLOW UP INVESTIGATION	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	(OFFICER)		

JUN 21 2005

6-21-05 E