FILED: April 4, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6179
(3:20-cv-02132-TMC)

CLAYTON JONES

Plaintiff - Appellant

v.

STATE OF SOUTH CAROLINA AND ITS AGENTS, individually and officially

Defendant - Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6179

CLAYTON JONES,

Plaintiff - Appellant,

v.

STATE OF SOUTH CAROLINA AND ITS AGENTS, individually and officially,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Timothy M. Cain, District Judge. (3:20-cv-02132-TMC)

Submitted: February 25, 2022 Decided: March 7, 2022

Before WILKINSON, MOTZ, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Clayton Jones, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clayton Jones appeals the district court's order dismissing without prejudice his 42 U.S.C. § 1983 complaint.* The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommended that relief be denied and advised Jones 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 Jones received proper notice and filed timely objections to the magistrate judge's recommendation, he has waived appellate review of the district court's determination that his complaint should be dismissed pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), because the objections were not specific to the particularized legal recommendations made by the magistrate judge on the issues that he now seeks to challenge on appeal. *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

* Although the district court dismissed the action without prejudice, mere amendment cannot cure the deficiencies identified by the district court, and we thus have jurisdiction over this appeal. *See Bing v. Brivo Sys., LLC*, 959 F.3d 605, 610 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1376 (2021).

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)). As to the remaining issues that Jones raises on appeal, we have reviewed the record and find no reversible error. Accordingly, we affirm the 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
COLUMBIA DIVISION

Clayton Jones, a/k/a Clayton T. Jones, a/k/a Clayton Thomas Jones, Plaintiff, vs. State of South Carolina and its Agents, individually and officially, Defendants.	Civil Action No. 3:20-cv-2132-TMC **ORDER**

Plaintiff Clayton T. Jones ("Plaintiff"), proceeding pro se and in forma pauperis, brought this action pursuant to 42 U.S.C. § 1983 alleging the Defendants violated his constitutional rights. (ECF Nos. 1; 1-2). The case was referred to a magistrate judge for all pretrial proceedings pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.). The magistrate judge issued a Report and Recommendation ("Report") recommending that the court abstain from considering Plaintiff's claims under Younger v. Harris, 401 U.S. 37 (1971), and dismiss this action without prejudice and without issuance or service or process. (ECF No. 11). The Report was sent via United States mail to Plaintiff at the address provided the court. (ECF No. 13). Although Plaintiff was advised of his right to file specific written objections to the Report and of the consequences of failing to do so, (ECF No. 11 at 9), Plaintiff did not file objections to the Report. Accordingly, the court entered an order on October 14, 2020, adopting the recommendation set forth in the Report that the court abstain from hearing this matter pursuant to Younger and dismissing the action without prejudice and without issuance or service of process. (ECF No. 19).

The clerk's office subsequently received a letter from Plaintiff claiming that he did not receive the magistrate judge's Report, and requesting that he be provided another copy of the Report and that the court reset the time for him to file objections thereto. (ECF No. 23). Although Plaintiff's mailing address has not changed throughout the entirety of this action, the court, out of an abundance of caution, entered a text order granting Plaintiff's request for an additional copy of the Report and additional time to file objections to it. (ECF No. 25). As a result, the court vacated its order of October 14, 2020 (ECF No. 19), and afforded Plaintiff an extension of time to file objections to the Report. (ECF No. 25). Plaintiff filed objections to the Report within the extra time allotted. (ECF No. 31). Therefore, the court may now consider the Report (ECF No. 11) in light of Plaintiff's objections.[1]

BACKGROUND

Plaintiff was arrested on August 5, 2019, pursuant to a warrant, and subsequently charged in the Richland County Court of General Sessions with third degree criminal sexual conduct with a minor in violation of South Carolina law. See State of South Carolina v. Clayton Thomas Jones,

[1] In addition to filing objections, Plaintiff filed motions for recusal and for the appointment of counsel. (ECF Nos. 29, 32). First, Plaintiff seeks to recuse the undersigned on the basis that Plaintiff initially did not have an opportunity to object to the Report before the court adopted it and that Plaintiff disagrees with the substantive conclusions set forth in the Report and the now-vacated order adopting the Report. (ECF No. 29). Although Plaintiff takes issue with the court's previous findings and rulings, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540, 555 (1994). Plaintiff has offered no reason to suggest this court has a disqualifying personal bias or prejudice against him. Accordingly, the motion to recuse is **denied**. (ECF No. 29).

Second, Plaintiff moved to have counsel appointed. (ECF No. 32). The law is clear that there is no right to appointed counsel in § 1983 cases. See Hardwick v. Ault, 517 F.2d 295, 298 (5th Cir. 1975). Although the court does enjoy the discretionary power to appoint counsel for an indigent in a civil action, such power should be exercised "only in exceptional cases." Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). Plaintiff has not shown that any exceptional circumstances exist in this case. Accordingly, this motion is **denied**. (ECF No. 32).

2019A4021602389, Richland County Public Index – Charges (last visited Sept. 24, 2020)[2]. As of the date of this Order, Plaintiff's criminal charges are still pending in state court. See id.

On June 4, 2020, Plaintiff filed this civil action under 42 U.S.C. § 1983, alleging that the State of South Carolina and "its agents" have been unlawfully detaining him since his arrest on August 5, 2019; that they have deprived him of the right to a speedy trial; and that they have denied him access to the courts by failing to process and file motions and complaints that he has been submitting. (ECF No. 1-2 at 5–6). Plaintiff asserts that Defendants, therefore, have violated his rights under both the United States Constitution and the Federal Speedy Trial Act, 18 U.S.C. §§ 3161–3174. Id. at 4. Plaintiff also asserts that he suffered a deprivation of his rights under the South Carolina Constitution and S.C. Code Ann. § 17-23-90. Id. Plaintiff claims that as a result of Defendants' actions, he has suffered a deprivation of liberty and property as well as mental anguish, lost wages, and damage to his reputation. Id. at 6. Plaintiff seeks monetary damages and an order releasing him from detention for his pending state charges. Id.

STANDARD OF REVIEW

In the Report, the magistrate judge sets forth the relevant facts and legal standards, which are incorporated herein by reference. (ECF No. 11 at 2–3). The recommendations set forth in the Report have no presumptive weight, and this court remains responsible for making a final determination in this matter. Wimmer v. Cook, 774 F.2d 68, 72 (4th Cir. 1985) (quoting Mathews v. Weber, 423 U.S. 261, 270–71 (1976)). The court is charged with making a de novo

[2] The court may take judicial notice of the state court and public records related to Plaintiff's state criminal proceedings. See Philips v. Pitt Cty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (noting a court "may properly take judicial notice of matters of public record" when considering dismissal of an action); Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that the most frequent use of judicial notice of ascertainable facts is in noticing the content of court records." (internal quotation marks and alteration omitted)).

determination of those portions of the Report to which a specific objection is made, and the court may accept, reject, 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). However, the court need only review for clear error "those portions which are not objected to—including those portions to which only 'general and conclusory' objections have been made[.]" Dunlap v. TM Trucking of the Carolinas, LLC, 288 F. Supp. 3d 654, 662 (D.S.C. 2017) (emphasis added). "An objection is specific if it 'enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute.'" Id. at 662 n.6 (quoting United States v. One Parcel of Real Prop., With Bldgs., Appurtenances, Improvements, & Contents, Known As: 2121 E. 30th St., Tulsa, Okla., 73 F.3d 1057, 1059 (10th Cir. 1996)). Furthermore, objections which merely restate arguments already presented to and ruled on by the magistrate judge or the court do not constitute specific objections. See, e.g., Howard v. Saul, 408 F. Supp. 3d 721, 726 (D.S.C. 2019). In the absence of specific objections to the Report, the court is not required to give any explanation for adopting the magistrate judge's recommendation. Greenspan v. Brothers Prop. Corp., 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing Camby v. Davis, 718 F.2d 198, 199–200 (4th Cir. 1983)).

Finally, since Plaintiff is proceeding pro se, this court is charged with construing his filings liberally in order to allow for the development of a potentially meritorious case. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). This does not mean, however, that the court can ignore the Plaintiff's failure to allege or prove facts that establish a claim currently cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990).

DISCUSSION

The magistrate judge's Report recommends the court abstain under Younger from deciding Plaintiff's claim that his speedy trial rights have been denied and that he has been denied the ability to file various motions and complaints. (ECF No. 11 at 4–5).[3] The magistrate judge concluded that the application of Younger abstention is appropriate in this case "to the extent that [Plaintiff] seeks to enjoin the pending state criminal proceedings against him," and noted that Plaintiff "can address the alleged speedy trial act violations in the pending criminal proceedings" as "the remedy for speedy trial act violations is dismissal of criminal charges." Id. at 5.

In addition to recommending dismissal based on the Younger abstention doctrine, the magistrate judge noted that numerous alternative bases justify dismissal of Plaintiff's § 1983 action. First, the magistrate judge concluded that Defendant South Carolina is entitled to dismissal on the basis of Eleventh Amendment immunity which has not been abrogated for actions under § 1983. Id. at 6. Second, the magistrate judge concluded that Plaintiff cannot state a claim under the Federal Speedy Trial Act because the Act applies to prosecutions brought by the United States, not the State of South Carolina. Id. Third, the magistrate judge found that Plaintiff's assertion that he has been denied access to the courts in connection to the state proceedings is subject to summary dismissal because "he is represented by counsel" and has, therefore, failed to allege a constitutional injury. Id. at 7.[4] Finally, the magistrate judge determined that the court should

[3] The court previously dismissed a similar action brought by Plaintiff pursuant to the Younger abstention doctrine. See Jones v. Odom, C/A No. 3:19-cv-3326-TMC, 2020 WL 1445747 (D.S.C. Mar. 25, 2020), aff'd, __ Fed. App'x __, 2020 WL 4333350 (4th Cir. July 28, 2020).

[4] To the extent Plaintiff asserts that he has been denied access to federal court, the magistrate judge found that Plaintiff has failed to allege that a non-frivolous civil rights claim has been frustrated or impeded and, therefore, has failed to allege an actual injury. Id.

decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367 over any state law claims asserted by Plaintiff. Id. at 7–8.

Plaintiff filed objections to the Report listing ten grounds. (ECF No. 31). Each ground, however, either reiterates Plaintiff's claims that were already presented to and rejected by the magistrate judge or makes a general and conclusory objection to the conclusions set forth in the Report. See id. Where "Plaintiff's objections merely rehash his complaint's assertions or flatly disagree with the Magistrate Judge's conclusions," they are not proper objections and the court need not address them. Brooks v. Williamsburg Cty. Sheriff's Office, No. 2:15-cv-1074-PMD, 2016 WL 1427316, at *3 (D.S.C. Apr. 11, 2016), aff'd sub nom. Brooks v. Johnson, 670 Fed. App'x 98 (4th Cir. 2016). The court has also carefully considered Plaintiff's other post-Report filings. (ECF Nos. 16, 17, 34, 35). These documents largely repeat his general assertion that his rights are being abridged in the prosecution of the pending state charges and fail to raise any specific challenge to the findings or conclusions in the Report.

Having thoroughly reviewed the record and the Report, the court finds no reason to depart from the Report's recommendation that the court abstain from hearing this matter pursuant to Younger, as Plaintiff's action essentially asks this court to interfere with ongoing state criminal proceedings. The court adopts the magistrate judge's Report, (ECF No. 11), and incorporates it herein. Accordingly, this action is **DISMISSED** without prejudice and without issuance or service or process.[5]

[5] Plaintiff contends that officials at the jail where he was detained "allowed [his] legal documents to be lost" while he was at the hospital. (ECF No. 36). Out of an abundance of caution, the court **GRANTS** Plaintiff's request for copies of the record in this case. (ECF No. 41). To the extent Plaintiff seeks copies of the record in other cases in which Plaintiff is or was a party, Plaintiff's request is **DENIED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
January 21, 2021

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Clayton T. Jones, Plaintiff, vs. State of South Carolina and its agents, Defendant.	C/A No. 3:20-2132-TMC-KFM **REPORT OF MAGISTRATE JUDGE**

The plaintiff, a pretrial detainee proceeding *pro se* and *in forma pauperis*, brings this civil action pursuant to 42 U.S.C. § 1983 alleging violations of his Constitutional rights (docs. 1; 1-2). Pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in this case and submit findings and recommendations to the district court.

The plaintiff's case was entered on the docket on June 4, 2020 (doc. 1). By order dated June 26, 2020, the undersigned informed the plaintiff that his case was not in proper form for judicial review (doc. 5). The plaintiff complied with the court's order, bringing his case into proper form. Having reviewed the plaintiff's complaint, the undersigned recommends it be dismissed.

ALLEGATIONS

The plaintiff, a pretrial detainee at the Alvin S. Glenn Detention Center ("Detention Center"), seeks damages from the defendants as a result of constitutional violations he asserts have occurred with his state criminal charges since his arrest on August 5, 2019 (docs. 1; 1-2). As an initial matter, the court takes judicial notice of the

plaintiff's pending criminal proceedings in the General Sessions Court of Richland County.[1] *See* Richland County Public Index, https://publicindex.sccourts.org/Richland/PublicIndex/PISearch.aspx (enter the plaintiff's name and 2019A4021602389) (last visited August 14, 2020).

The plaintiff contends that the defendant has violated his right to a speedy trial and denied him access to the courts (doc. 1-2 at 4). He contends that since his arrest on August 5, 2019, he has been unlawfully detained at the Detention Center (*id.* at 5). He alleges that he has been submitting motions and complaints, but they are not being heard, served, filed, or delivered (*id.* at 5–6). The plaintiff also asserts that additional violations can be obtained from an individual named Julian Jones (*id.* at 6).

The plaintiff's alleged injuries include deprivation of liberty and property along with mental anguish, lost wages, incurred legal fees, and damage to his credit, etc. (*id.*). For relief, the plaintiff seeks money damages and an injunction compelling the dismissal of his criminal charges and his release from the Detention Center (*id.*).

STANDARD OF REVIEW

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). Further, the plaintiff is a prisoner under the definition of 28 U.S.C. § 1915A(c), and "seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). Thus, even if the plaintiff had prepaid the full filing fee, this Court is charged with screening the plaintiff's lawsuit to identify cognizable

[1] *Phillips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that '[t]he most frequent use of judicial notice . . . is in noticing the content of court records.'").

claims or to dismiss the complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted, or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

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*). 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, 391 (4th Cir. 1990).

This complaint is filed pursuant to 42 U.S.C. § 1983, which "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)). A civil action under § 1983 "creates a private right of action to vindicate violations of 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

DISCUSSION

As noted above, the plaintiff filed the instant action pursuant to § 1983, seeking damages from the defendant. For the reasons that follow, the instant matter is subject to summary dismissal.

As an initial matter, this case is substantially similar to a prior case brought by the plaintiff against a different defendant. *See Jones v. Odom*, C/A No. 3:19-cv-03326-TMC (D.S.C.). That case was dismissed based upon *Younger* abstention because the plaintiff

sought interference by this court in his state criminal charges. *See Jones v. Odom*, C/A No. 3:19-cv-03326-TMC, 2020 WL 1445747 (D.S.C. Mar. 25, 2020), *aff'd* – F. App'x —, 2020 WL 4333350 (4th Cir. July 28, 2020). Nevertheless, although this matter is likewise subject to dismissal based upon *Younger* abstention (because the plaintiff again seeks federal court interference with his state pending criminal charges), the undersigned will address the plaintiff's claims to the extent they are different than those presented in the prior matter.

***Younger* Abstention**

With respect to the plaintiff's assertion that his speedy trial rights have been violated and that his motions and complaints are not being filed (seeking release from the Detention Center and dismissal of his pending charge), the plaintiff is again requesting that this court interfere with or enjoin the pending state criminal prosecution against him (*see generally* docs. 1; 1-2). As noted above, the plaintiff has a pending charge in the Richland County Court of General Sessions. *See Richland County Public Index* (enter the plaintiff's name and 2019A4021602389) (last visited August 13, 2020). Because a federal court may not award injunctive relief that would affect pending state criminal proceedings absent extraordinary circumstances, this court should abstain from interfering with it. In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court held that a federal court should not interfere with state criminal proceedings "except in the most narrow and extraordinary of circumstances." *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). *Younger* noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. *Younger*, 401 U.S. at 43–45; *see also Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72–73 (2013) (explaining the circumstances when *Younger* abstention is appropriate). From *Younger* and its progeny, the Fourth Circuit Court of Appeals has culled the following test to determine when abstention is appropriate: "(1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal claims in the state

proceedings." *Martin Marietta Corp. v. Md. Comm'n on Human Relations*, 38 F.3d 1392, 1396 (4th Cir. 1994) (citing *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)).

Here, the first criterion is met, as the plaintiff is involved in ongoing state criminal proceedings. As for the second criterion, the Supreme Court has stated that the "States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief." *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). The Court also addressed the third criterion in noting "'that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.'" *Gilliam*, 75 F.3d at 904 (quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)). Here, the plaintiff can address the alleged speedy trial act violations in his pending criminal proceedings. Indeed, the remedy for speedy trial act violations is dismissal of criminal charges. *See United States v. Williams*, 665 F. App'x 290, 292, 293 (4th Cir. 2016) (unpublished) (noting that the speedy trial act provides as its remedy dismissal of criminal charges on motion of the defendant). Moreover, the plaintiff has not made a showing of "extraordinary circumstances" justifying federal interference with the state proceedings. *See Robinson v. Thomas*, 855 F.3d 278, 286 (4th Cir. 2017) ("A federal court may disregard *Younger's* mandate to abstain from interfering with ongoing state proceedings only where 'extraordinary circumstances' exist that present the possibility of irreparable harm."). Therefore, to the extent the plaintiff seeks to enjoin the pending state criminal proceedings against him, this court should abstain from hearing this action.

Section 1983 Claims

As noted, the plaintiff's request that this court have his criminal charges dismissed is subject to dismissal based upon *Younger* abstention. However, even if not barred by *Younger*, the plaintiff's claims are plainly barred for other reasons, including the

sovereign immunity afforded to the State of South Carolina. *See Nivens v. Gilchrist*, 444 F.3d 237, 248–50 (4th Cir. 2006) (noting that dismissal of an action rather than a stay is appropriate when the plaintiff's damages claims are "plainly barred" for other reasons).

State of South Carolina

The plaintiff has named the State of South Carolina "and its agents" as a defendant in this action, although it is unclear what his allegations are against the State of South Carolina or what agents he refers to. Nevertheless, the State of South Carolina is entitled to Eleventh Amendment Immunity. *See Alden v. Maine*, 527 U.S. 706, 712–13 (1999); *Alabama v. Pugh*, 438 U.S. 781, 781–82 (1978); *see also* S.C. Code Ann. § 15-78-20(e) (noting that the State of South Carolina has not consented to suit in federal court); *Quern v. Jordan*, 440 U.S. 332, 342–43 (1979) (holding that congress has not abrogated the state's sovereign immunity in § 1983 actions). Accordingly, the undersigned recommends that this action be summarily dismissed.

Federal Speedy Trial Act Claim

The plaintiff alleges that his speedy trial rights pursuant to 18 U.S.C. § 3164 have been violated (doc. 1-2 at 4). As an initial matter, the Federal Speedy Trial Act, 18 U.S.C. § 3116, *et seq.*, applies only to criminal prosecutions brought by the United States, not those brought by state or local governments. *See United States v. Burgess*, 684 F.3d 445, 451 (4th Cir. 2012). Moreover, the Federal Speedy Trial Act applies to criminal cases—not civil cases. *See Herbert v. Gooding*, C/A No. 3:12-cv-02621-CMC, 2013 WL 3338494, at *1 n.3 (D.S.C. July 2, 2013). As such, the plaintiff has no federal claim under the Federal Speedy Trial Act.

Denial of Access to the Courts Claim

It also appears that the plaintiff alleges denial of access to the courts based upon his dissatisfaction with proceedings in the Richland County General Sessions Court (doc. 1-2 at 4, 5–6). Such a claim for denial of access to the courts must be pled with

specificity. *Cochran v. Morris*, 73 F.3d 1310, 1317 (4th Cir. 1996). Additionally, to maintain a valid constitutional claim for denial of access to the courts, a prisoner must show actual injury. *Cochran*, 73 F.3d at 1317; *see Lewis v. Casey*, 518 U.S. 343, 349 (1996). The plaintiff has not plausibly alleged actual injury. As an initial matter, the plaintiff has not alleged a constitutional injury with respect to his pending state criminal charges as he alleges he is represented by counsel, seeking repayment of legal fees in the instant action (doc. 1-2 at 6). Moreover, as outlined above, pursuant to *Younger* abstention, this court will not interfere with the plaintiff's pending criminal charges.

To the extent the plaintiff's denial of access to the courts claim involves proceedings in this court, the plaintiff has failed to allege actual injury because actual injury requires a demonstration that a non-frivolous post-conviction or civil rights legal claim was frustrated or impeded. *See Lewis*, 518 U.S. at 353–55. Accordingly, in light of the foregoing, the plaintiff's denial of access to the courts claim is subject to summary dismissal.

State Law Claims

To the extent the plaintiff's reference to violations of his rights pursuant to the South Carolina Speedy Trial Act as well as S.C. Code § 17-23-90, the court should abstain from exercising jurisdiction over such claims. Such claims can be considered by this court through the exercise of "supplemental jurisdiction," which allows federal courts to hear and decide state law claims along with federal claims. *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 387 (1998); *see* 28 U.S.C. § 1367. However, federal courts are permitted to decline supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3) if "the district court has dismissed all claims over which it has original jurisdiction." Here, as noted, the complaint fails to state a claim for a constitutional violation under 42 U.S.C. § 1983. Thus, this court should decline to exercise supplemental jurisdiction over the plaintiff's state law claims under 28 U.S.C. § 1367(c)(3). *See Lovern v. Edwards*, 190 F.3d 648, 655 (4th Cir. 1999)

("[T]he Constitution does not contemplate the federal judiciary deciding issues of state law among non-diverse litigants.").

RECOMMENDATION

The undersigned is of the opinion that the plaintiff cannot cure the defects identified above by amending his complaint. *See Bing v. Brivo Sys., LLC*, 959 F.3d 605 (4th Cir. 2020) (citing *Goode v. Cent. Va. Legal Aid Soc'y*, 807 F.3d 619 (4th Cir. 2015); *In re GNC Corp.*, 789 F.3d 505 (4th Cir. 2015); *Chao v. Rivendell Woods, Inc.*, 415 F.3d 342 (4th Cir. 2005); *Domino Sugar Corp. v. Sugar Workers Local Union 392 of United Food and Commercial Workers Int'l Union*, 10 F.3d 1064 (4th Cir. 1993)). As noted in more detail above—the present action by the plaintiff is at least partially repetitive of an earlier action regarding the same claims that was dismissed based upon *Younger* abstention and the instant matter fails to provide a basis for relief under § 1983. Thus, the undersigned recommends that the court decline to automatically give the plaintiff leave to amend his complaint. Accordingly, based upon the foregoing, the Court recommends that the District Court dismiss this action without prejudice and without issuance and service of process.

The attention of the parties is directed to the important notice on the next page.

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

August 17, 2020
Greenville, South Carolina

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 committees 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).