UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7108

JULIUS WAYNE BAKER,

Petitioner - Appellant,

v.

BRYAN K. DOBBS,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Henry M. Herlong, Jr., Senior District Judge. (9:20-cv-03383-HMH)

Submitted: October 19, 2021 Decided: October 22, 2021

Before GREGORY, Chief Judge, AGEE, Circuit Judge, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Julius Wayne Baker, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Julius Wayne Baker, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and dismissing for lack of jurisdiction his 28 U.S.C. § 2241 petition. 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 Baker 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 Baker received proper notice and filed timely objections to the magistrate judge's recommendation, he has waived appellate review because 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 judgment of the district court. We deny Baker's motion to appoint counsel.

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 A

FILED: March 3, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No: 21-7108
(9:20-cv-03383-HMH)

JULIUS WAYNE BAKER

Petitioner - Appellant

v.

BRYAN K. DOBBS

Respondent - Appellee

MANDATE

The judgment of this court, entered 10/22/2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Julius Wayne Baker, Petitioner, v. ~~Warden of USP Lewisburg~~, Bryan K. Dobbs, Respondent.	)	C/A No. 9:20-03383-HMH-MHC **REPORT AND RECOMMENDATION**

The pro se Petitioner, Julius Wayne Baker, a federal inmate at FCI-Williamsburg, brings this action as an application for writ of habeas corpus (Petition) pursuant to 28 U.S.C. § 2241. Under established local procedure in this judicial district, a careful review has been made of the pro se petition filed in this case pursuant to the procedural provisions of the Rules Governing Section 2254 Proceedings in the United States District Court, 28 U.S.C. § 2254;[1] the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996; and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324–25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir.1995); and *Todd v. Baskerville*, 712 F.2d 70 (4th Cir.1983).

Pro se petitions are held to a less stringent standard than those drafted by attorneys, and a court is charged with liberally construing a petition filed by a pro se litigant to allow the development of a potentially meritorious case. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016). However, even when considered under this

[1] The Rules Governing Section 2254 are applicable to habeas actions brought under § 2241. *See* Rule 1(b) of Rules Governing Section 2254 Cases in the United States District Courts (the district court may apply any or all of these rules to a habeas corpus petition not filed pursuant to 28 U.S.C. § 2254).

MHC

less stringent standard, for the reasons set forth below, the Petition submitted in this case is subject to summary dismissal. The requirement of liberal construction does not mean that this Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently 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").

A. BACKGROUND

Petitioner initially filed a letter requesting a § 2241 petition and that he be resentenced. ECF No. 1. In an Order issued October 27, 2020, Petitioner was directed to complete and sign a § 2241 petition form. ECF No. 5. On March 11, 2021, Petitioner submitted the § 2241 form, which has been filed as an attachment to the original Petition. *See* ECF No. 1-2.

On August 2, 2012, Petitioner was indicted and charged with Sex Trafficking of a Minor in violation of 18 U.S.C. § 1591(a)(1) (Count One) and Attempted Sex Trafficking of a Minor in violation of 18 U.S.C §§ 1591(a)(1) and 1594(a) (Count Two). Petitioner pleaded guilty, in the District Court for the Southern District of Florida, to Count One. On February 5, 2013, he was sentenced to 292 months' imprisonment and five years' supervised release. Count Two was dismissed. The Eleventh Circuit Court of Appeals affirmed his sentence on September 10, 2013. *See United States v. Baker*, 529 F. App'x 987, 988 (11th Cir. 2013); *United States v. Baker*, No. 1:12-cr-20572-WPD-1 (S.D. Fla); ECF No. 1-2 at 1-2.[2]

[2] This Court may take judicial notice of factual information located in postings on government websites. *See Tisdale v. South Carolina Highway Patrol*, No. 0:09–1009–HFF–PJG, 2009 WL 1491409, *1 n. 1 (D.S.C. May 27, 2009), *aff'd*, 347 F. App'x 965 (4th Cir. Aug. 27, 2009); *In re Katrina Canal Breaches Consol. Litig.*, No. 05–4182, 2008 WL 4185869 at * 2 (E.D. La. Sept. 8, 2008)(noting that courts may take judicial notice of governmental websites including other courts' records).

In November 2014, Petitioner filed a motion to vacate pursuant to 28 U.S.C. § 2255 in which he complained of an illegal search of his phone, denial of requested counsel during questioning, a lack of a warrant for tracking and taking his cell phone, violation of attorney-client privilege, breach of his plea agreement, illegal tape recording, illegal forfeiture, and ineffective assistance of counsel. The sentencing court denied the § 2255 motion on November 20, 2014. *See Baker v. United States*, No. 12-20572-CR, 2014 WL 12915535 (S.D. Fla. Nov. 20, 2014); ECF No. 1-2 at 3-5. The sentencing court denied Petitioner's motion to reduce sentence in June 2016, and his motion for Amendment 794 in November 2018. *See Baker v. United States*, No. 1:12-cr-20572-WPD-1 (S.D. Fla.), Docs. 62, 63, 94. On January 9, 2019, the Eleventh Circuit denied Petitioner's application to authorize the filing of a second or successive § 2255 motion. *In re Baker*, No. 18-15095-C, 2019 WL 3822305 (11th Cir. Jan. 9, 2019). On January 16, 2019, Petitioner filed an "Independent Action" pursuant to Fed. R. Civ. P. 60(d)(3) that the sentencing court interpreted as a second motion to vacate pursuant to § 2255 and dismissed for lack of jurisdiction. The Eleventh Circuit affirmed on January 28, 2020. *See Baker v. United States*, 791 F. App'x 884 (11th Cir. 2020); ECF No. 1-2 at 6. In October 2020, Petitioner filed a motion for a hearing for resentencing based on *United States v. Wei Lin*, 841 F.3d 823, 825 (9th Cir. 2016), which the sentencing court denied. *See Baker v. United States*, No. 1:12-cr-20572-WPD-1 (S.D. Fla), Docs. 124, 125.

B. DISCUSSION

Petitioner contends that this court should "[g]rant time served, overturn, and present a[n] attorney to take over the petitioner's case to proceed with lawsuit or grant petitioner compensation, granting all grounds and relief [found in *United States v. Wei Lin*]...." ECF No. 1-2 at 8. His asserted grounds for relief are:

> GROUND ONE: Incarcerated in another county in commission of the crime, also driving trucks out of town. Victim was also incarcerated in the same matter in between times.
>
> GROUND TWO: 4th Amendment Violation, through tracking phone without a warrant. [*Riley*], 134 S.Ct. at 2473, [*Carpenter v. US*], 138 S.Ct. 2206[.]
>
> GROUND THREE: [*Miranda*] Rights forged.
>
> GROUND FOUR: AUSA Olivia S. Chue did not have a[n] Oath of Office, Appointment Affidavit or Proof of Employment through the US Department of Justice, where no records are found in the (FOIA), EOUSA), OIP), OGIS), (NPRC) nor the (NARA) or the Florida Bar and the Florida Board of Bar Examiners.

ECF No. 1-2 at 7-8.

"[I]t is well established that defendants convicted in federal court are obliged to seek habeas relief from their convictions and sentences through § 2255," not through a petition filed pursuant to § 2241. *Rice v. Rivera*, 617 F.3d 802, 807 (4th Cir. 2010) (citing *In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997)). Petitioner cannot challenge his federal conviction and/or sentence under § 2241 unless he can satisfy the § 2255 savings clause, which provides:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255(e); *see also Reyes–Requena v. United States*, 243 F.3d 893, 901 (5th Cir. 2001); *Ennis v. Olsen*, 238 F.3d 411 (4th Cir. 2000).

Petitioner's asserted grounds for relief all appear to be challenges to the legality of his conviction. Section 2255 is inadequate and ineffective to test the legality of a conviction when:

> (1) at the time of the conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000). The test set forth in *In re Jones* (the *Jones* test) was formulated expressly to provide a remedy for the "fundamental defect presented by a situation in which an individual is incarcerated for conduct that is not criminal but, through no fault of his own, has no source of redress." *Id.* at 333 n. 3.

Petitioner cannot meet the § 2255 savings clause pursuant to the *In re Jones* test because he has not alleged that subsequent to his direct appeal and his first § 2255 motion, the substantive law changed such that the conduct of which he was convicted is deemed not to be criminal. As the Fourth Circuit has noted:

> The test in *In re Jones* functions as a gateway to relief without interrogating the factual issues of whether the underlying criminal activity occurred. *In Re Jones* assumes that the factual record is settled but requires this Court to compare prior and current precedent to evaluate whether a substantive change in the law has occurred. A petitioner satisfies this standard if the substantive change in the law makes previously illegal conduct no longer a source of criminal liability. In other words, our analysis is tethered to a change in the law, not a change in the factual underpinnings or evidence of a criminal record.

Hahn v. Moseley, 931 F.3d 295, 303 (4th Cir. 2019). Here, Petitioner has not pointed to any substantive change in the law that makes his previously illegal conduct (Sex Trafficking of a Minor) no longer a source of criminal liability.

As to Grounds One (in which Petitioner appears to assert that he was not in the county or was in jail at the times of the alleged crime), Three (*Miranda* rights allegedly forged), and Four (AUSA allegedly did not have an oath of office, appointment affidavit, or proof of employment), Petitioner has pointed to no change in the substantive law. As to Ground Two (Petitioner's cell phone allegedly was tracked without a warrant), Petitioner references *Riley v. California*, 573 U.S. 373 (2014) and *Carpenter v. U.S.*, 138 S.Ct. 2206 (2018). However, the decision in *Riley* was issued on June 25, 2014, prior to Petitioner filing his first § 2255 motion in November 2014, such that Petitioner cannot meet the second prong of the *In re Jones* test because any alleged change in

substantive law was made prior to his first § 2255 motion (and in fact was considered by the sentencing court).[3] Although the decision in *Carpenter* was issued after Petitioner's first § 2255 motion, he has not alleged that the substantive law changed such that the conduct of which he was convicted is deemed not to be criminal.

None of Petitioner's asserted grounds for relief pertain to his sentence. However, in his initial filing and in the "Request for Relief" section of the § 2241 petition form, Petitioner appears to request relief pursuant to *United States v. Wei Lin*. *See* ECF No. 1 at 1; 1-2 at 8. In *Wei Lin*,[4] the Ninth Circuit held that in determining if the offense of conviction was under the statutory provision mandating a 15-year mandatory minimum sentence in certain situations, the court should ask if the defendant was convicted of an offense subject to such a mandatory minimum rather than looking at the offense conduct. *See United States v. Wei Lin*, 841 F.3d at 826-827.[5]

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[3] The sentencing court denied Petitioner's motion to vacate as to this issue because Petitioner (in his voluntary guilty plea) waived his argument about a lack of warrant to track his cell phone, he failed to explain how he was prejudiced or how a lack of a warrant affected his decision to plead guilty, and he failed to show that a court order was not obtained to secure the records in question. *See Baker v. United States*, No. 12-20572-CR, 2014 WL 12915535, at *3 (S.D. Fla. Nov. 20, 2014).

[4] Wei Lin was charged with conspiracy to commit sex trafficking, in violation of 18 U.S.C. § 1594(c), and several counts of sex trafficking, in violation of 18 U.S.C. § 1591(a). He plead guilty to the conspiracy count, which carried no mandatory minimum, *see* 18 U.S.C. § 1594, but his substantive sex trafficking offense charges, which carried fifteen-year mandatory minimums, were dismissed, *see* 15 U.S.C. § 1591(b)(1). The Ninth Circuit found that because Wei Lin was not subject to 18 U.S.C. § 1591(b)(1)'s mandatory minimum, the district court erred in applying U.S.S.G. § 2G1.1(a)(1) to find a base offense level of 34 rather than 14. *See Wei Lin*, 841 F.3d at 824, 827. As noted above, Petitioner in this case Petitioner pleaded guilty to the § 1591(a)(1) charge and the § 1594(a) charge was dismissed.

[5] The Eighth Circuit and Third Circuit have rejected the Ninth Circuit's approach in *Wei Lin*. *See United States v. Carter*, 960 F.3d 1007, 1014 (8th Cir. 2020); *United States v. Sims*, 957 F.3d 362, 363-64 (3rd Cir. 2020) (finding that following the Ninth Circuit's interpretation in *Wei Lin* would lead to "absurd results").

The Fourth Circuit, in *United States v. Wheeler*, 886 F.3d 415, 423–26 (4th Cir. 2018), held that § 2255 is inadequate or ineffective to test the legality of a sentence when:

> at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect.

United States v. Wheeler, 886 F.3d at 429 (citing *In re Jones*, 226 F.3d at 333-34) (the *Wheeler* test).

Petitioner cannot satisfy the second prong of the *Wheeler* test because he has not alleged that subsequent to his direct appeal and his first § 2255 motion, the settled substantive law changed and was deemed to apply retroactively on collateral review. "[I]n evaluating substantive claims under the savings clause," a district court must "look to the substantive law of the circuit where a defendant was convicted." *Hahn v. Moseley*, 931 F.3d at 301; *see also Ponder v. United States*, 800 F. App'x 181, 183 (4th Cir. Jan. 30, 2020)(noting that in reviewing a § 2241 denial by a district court, the Fourth Circuit applies Fourth Circuit procedural law, but "look[s] to the substantive law of the circuit where a defendant was convicted") (citing *Hahn*, 931 F.3d at 301). Here, Petitioner has not identified a change in substantive law that arises either from the United States Supreme Court or the circuit in which Petitioner was convicted (the Eleventh Circuit). Moreover, Petitioner has not shown that *Wei Lin* is retroactive.

For the reasons discussed above, Petitioner fails to satisfy the savings clause in 28 U.S.C. § 2255(e) pursuant to the tests articulated in *Jones* and *Wheeler*. Thus, the Court must dismiss his § 2241 petition for lack of jurisdiction. *See Habeck v. United States*, 741 F. App'x 953, 954 (4th Cir. 2018) ("The requirements of the § 2255(e) savings clause are jurisdictional."); *see also Rice*

v. Riviera, 617 F.3d at 807 ("[T]he district court lacked jurisdiction over the [h]abeas [petition] because Rice is unable to satisfy the second prong of the *Jones* rule.").

C. MOTION FOR A CLASS ACTION

On December 30, 2020, Petitioner filed a motion requesting a class action lawsuit. ECF No. 17. Petitioner appears to allege claims concerning black mold, brown water, flooding in rooms, ceilings falling, brown laundry, inedible food, and overpriced items in the commissary.[6] He also appears to allege claims about his medical care and injuries he sustained from a fall.

Initially, it should be noted the present habeas action is the only case that Petitioner has filed in this court. The settled rules provide that habeas corpus relief is appropriate only when a prisoner attacks the fact or duration of confinement. *See Preiser v. Rodriguez*, 411 U.S. 475 (1973). Moreover, to the extent that the motion for a class action is requesting monetary or injunctive relief as to Petitioner's conditions of confinement or medical deliberate indifference, these claims may not be brought in the present habeas action and instead must be brought pursuant to *Bivens v. Six Unknown Named Federal Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) or some other procedural vehicle. *See Rodriguez v. Ratledge*, 715 F. App'x 261, 266 (4th Cir. 2017) ("[C]ourts have generally held that a [42 U.S.C.] § 1983 suit or a *Bivens* action is the appropriate means of challenging conditions of confinement, whereas § 2241 petitions are not.").[7]

[6] It is unclear whether Petitioner only asserts claims about incidents at FCI-Estill, where he was previously housed, or he also asserts claims about incidents at FCI-Williamsburg, where he is currently housed.

[7] To the extent that Petitioner wants to file a separate action to attempt to assert his own claims (and not those of others) concerning matters raised in the motion for a class action, he may do so by filing a complaint in this court asserting those claims. In a separate order, the Clerk of Court will be directed to mail a blank complaint form (Complaint for Violation of Civil Rights (Prisoner Complaint)) to Petitioner.

Finally, in any case, Petitioner carries the burden of establishing each of the requirements for a class action. *See, e.g., Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 321 (4th Cir. 2006) ("[I]t is the plaintiff who bears the burden of showing that the class does comply with Rule 23.") Pursuant to Rule 23:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
>
> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Typically, a factual record must be developed before the court may rule on certifying or denying certification. *Boyce v. Wachovia Sec., LLC*, No. 5:09-cv-263-FC, 2010 WL 1253737, at *3 (E.D.N.C. Mar. 29, 2010). However, "where the complaint demonstrates as a matter of law that plaintiffs cannot meet the requirements for maintaining a class action," the court may dismiss without fully developing the record. *Id.* at *4. Here, certification of a class as requested by Petitioner is not appropriate, as discussed below.

Petitioner does not meet the requirements of Fed. R. Civ. P. 23(a)(4), that he will be able to "fairly and adequately protect the interests of the class." This requirement is met if it appears that (1) the lead plaintiff has interests in common with, and not antagonistic to, the proposed class's interests; and (2) the lead plaintiff's attorney(s) are qualified, experienced, and generally able to conduct the litigation. *See* Fed. R. Civ. P. 23(a)(4); *Temp. Servs., Inc. v. Am. Int'l Grp., Inc.*, No. 3:08-cv-00271-JFA, 2012 WL 13008138, at *2 (D.S.C. July 31, 2012); *In re Kirshner Med.*, 139 F.R.D. 74, 79 (D. Md. 1991). Here there is no "lead attorney" in this case, or indeed any attorney

at all, and it is well settled that the Fourth Circuit does not certify a class where a pro se litigant or litigants are acting as representatives of that class. *See Fowler v. Lee*, 18 F. App'x 164, 165 (4th Cir. 2001). Petitioner also fails to assert sufficient facts as to commonality, which requires that there be "questions of law or fact common to the class." Fed. R. Civ. P 23(a)(2). Here, the allegations set forth in his Petition concern his criminal conviction and sentence and many of the allegations raised in his motion for a class action involve claims about actions that concern Petitioner personally with his particularized injury as opposed to allegations of a common injury. Thus, Petitioner cannot meet the requirements for class certification.

For all of the foregoing reasons, it recommended that Petitioner's motion for a class action be denied.

D. RECOMMENDATION

Accordingly, it is **RECOMMENDED** that Petitioner's motion for a class action (ECF No. 17) be **DENIED** and the Petition in this action be **DISMISSED** without prejudice and without requiring Respondent to file a return.

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

Molly H. Cherry
United States Magistrate Judge

March 24, 2021
Charleston, 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 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
Post Office Box 835
Charleston, South Carolina 29402

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).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Julius Wayne Baker, Petitioner,	)	C/A No. 9:20-3383-HMH-MHC
v.	)	**ORDER**
~~Warden of USP Lewisburg~~, Bryan K. Dobbs, Respondent.	)	

Julius Wayne Baker, a pro se federal inmate, seeks habeas corpus relief under 28 U.S.C. § 2241. In the event that a limitations issue arises, Petitioner shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to the district court). Under 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

By Order dated October 27, 2020, Petitioner was given a specific time frame in which to bring this case into proper form. Petitioner has complied with the court's order, and this case is now in proper form.

MOTION FOR APPOINTMENT OF COUNSEL:

On March 15, 2021, Petitioner filed a motion requesting appointment of counsel. He asserts that he has filed a motion for post-conviction relief and is unable to afford to hire a lawyer. There is no general constitutional right to appointed counsel in federal habeas proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (holding there is no constitutional right to counsel beyond a first appeal of right); *Hunt v. Nuth*, 57 F.3d 1327, 1340 (4th Cir. 1995). An attorney may be appointed for a person "seeking relief under section 2241, 2254, or 2255 of title 28" when "the court determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). Counsel may be appointed when necessary for effective discovery and must be appointed when an evidentiary hearing is required. *See* Rules Governing § 2254 Cases, Rules 6(a) & 8(c). The undersigned finds that this action does not present legally complex issues, any discovery issues are premature, and no evidentiary hearing has been scheduled such that the interests of justice do not require the appointment of counsel at this time. Accordingly, Petitioner's request for appointment of counsel (ECF No. 24) is **DENIED**. *See, e.g., Marvin v. Creecy*, 812 F.2d 1401 (4th Cir. 1987) (noting that the determination of whether to appoint counsel in a habeas action to the court's discretion).

TO THE CLERK OF COURT:

The Clerk of Court is directed to terminate the current Respondent, and to add Bryan K.

Dobbs (the Warden of FCI-Williamsburg) as the Respondent,[1] because a prisoner's custodian is the proper respondent in a habeas corpus action. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004).

The Clerk of Court is directed to send a blank complaint form ((Complaint for Violation of Civil Rights (Prisoner Complaint)) to Petitioner.[2]

The Clerk of Court shall serve the § 2241 Petition and this Order on Respondent pursuant to Rule 4 of the Rules Governing Section 2254 cases.[3] The Warden of FCI-Williamsburg and the United States Attorney for the District of South Carolina shall each receive a copy of this Order and a copy of the § 2241 Petition through the Electronic Case Filing System. The Clerk of Court shall also serve the § 2241 Petition and this Order by registered or certified mail to the Attorney General of the United States in compliance with Rule 4(i) of the Federal Rules of Civil Procedure. Rule 4(i) applies to habeas cases under Rule 81(a)(4)(A) of the Federal Rules of Civil Procedure to the extent that the practice in such proceedings "is not specified in a federal statute, [or] the Rules Governing Section 2254 Cases ...."

TO RESPONDENT:

Respondent shall not file an answer to the Petition because the Petition is subject to summary dismissal.

IT IS SO ORDERED.

Molly H. Cherry
United States Magistrate Judge

March 24, 2021
Charleston, South Carolina

[1] At the time he filed this action, Petitioner was housed at USP-Lewisburg. He is currently housed at USP-Williamsburg. *See* ECF Nos. 1, 8.

[2] In a separate report and recommendation, it is recommended that Petitioner's motion for a class action (ECF No. 17) be denied. In his motion, Petitioner asserts constitutional claims not related to the current habeas action. To the extent Petitioner wishes to raise these claims on his own behalf only, a blank complaint form is being sent to him so that he may file a separate lawsuit.

[3] The Rules Governing Section 2254 Cases may be applied in habeas actions filed pursuant to 28 U.S.C. § 2241. Rule 1(b) of the Rules Governing Section 2254 Cases states a "district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."

Appendix C

FILED: February 23, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7108
(9:20-cv-03383-HMH)

JULIUS WAYNE BAKER

Petitioner - Appellant

v.

BRYAN K. DOBBS

Respondent - Appellee

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: Chief Judge Gregory, Judge Agee, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk