

UNPUBLISHED**UNITED STATES COURT OF APPEALS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

No. 23-6416

LARRY WILLIAMS,**Plaintiff - Appellant,****v.****WARDEN KELLY; JAMES SAVGE; DOC DEEZIEN; PAM C. KELLY; SUSAN THOMAS JAMES; AL GREEN; S. QUE; PAT BARFIELD; JOE HARRIS,****Defendants - Appellees.**

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Mary G. Lewis, District Judge. (5:22-cv-00004-MGL)

Submitted: June 22, 2023

Decided: June 27, 2023

Before HARRIS and HEYTENS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Larry Williams, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Williams appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Williams' 42 U.S.C. § 1983 complaint under 28 U.S.C. § 1915(e)(2)(B). We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Williams v. Kelly*, No. 5:22-cv-00004-MGL (D.S.C. Apr. 12, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: August 1, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6416
(5:22-cv-00004-MGL)

LARRY WILLIAMS

Plaintiff - Appellant

v.

WARDEN KELLY; JAMES SAVGE; DOC DEEZIEN; PAM C. KELLY;
SUSAN THOMAS JAMES; AL GREEN; S. QUE; PAT BARFIELD; JOE
HARRIS

Defendants - Appellees

O R D E R

The court denies the petition and supplemental petition for rehearing.

Entered at the direction of the panel: Judge Harris, Judge Heytens, and

Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk





**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THE COMPLAINT**

Plaintiff Larry Williams (Williams) filed this lawsuit against the above-named defendants pursuant to 42 U.S.C. § 1983. Williams is representing himself.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge recommending to the Court it dismiss the complaint. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report 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 with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 23, 2022, and the Clerk of Court entered Williams's objections on March 7, 2022. The Court has reviewed the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

Williams fails to offer any specific objections to the Report. As per the law of the Fourth Circuit, this Court need not conduct a *de novo* review of the record "when a party makes general and conclusory objections that do not direct the court to a specific error in the [Magistrate Judge's] proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The Court reviews the Report and Recommendation only for clear error in the absence of specific objections. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in 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 to accept the recommendation.") (citation omitted).

Here, as the Court already stated, Williams wholly failed to bring any specific objections to the Report. Instead, he offers nothing more than non-specific objections. Inasmuch as the Court agrees with the Magistrate Judge's analysis of the complaint in her comprehensive and well-reasoned Report, it need not repeat the discussion here.

Consequently, because Williams neglects to make any specific objections to the Report, and the Court has found no clear error, the Court will overrule the objections and accept the Magistrate Judge's recommendation that Williams's complaint be dismissed..

Further, inasmuch as the Magistrate Judge warned Williams of the consequences of failing to file specific objections, Report at 4, he has waived appellate review. *See Howard v. Sec'y of*

Health & Human Servs., 932 F.2d 505, 508-09 (6th Cir. 1991) (holding general objections are insufficient to preserve appellate review).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Williams's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court Williams's complaint is **DISMISSED**.

IT IS SO ORDERED.

Signed this 12th day of April, 2023, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Williams is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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

Larry Williams,)	C/A No.: 5:22-4-MGL-KDW
)	
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
Warden Kelly; James Savage; Doc. Deezien;)	
Pam C. Kelly; Susan Thomas James;)	
Al Green; S. Que; Pat Barfield; and Joe)	
Harris,)	
)	
Defendants.)	
)	

This is a civil action filed by state prisoner Larry Williams ("Plaintiff") against Warden Kelly, James Savage, Doc. Deezien, Pam C. Kelly, Susan Thomas James, Al Green, S. Que, Pat Barfield, and Joe Harris. ECF No. 1. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) 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 the district judge dismiss the Complaint without prejudice and without issuance and service of process.

I. Factual and Procedural Background

Plaintiff alleges Defendants cut out his right intestine and put a chip in its place. ECF No. 1-2 at 2. Plaintiff states he can hear it. *Id.* Plaintiff seeks monetary damages, and requests that his right intestine be replaced. *Id.*

II. Discussion

A. Standard of Review

Plaintiff filed this action 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 the case upon a finding that an 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 (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 (1989); *Allison v. Kyle*, 66 F.3d 71, 73 (5th Cir. 1995).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal district 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 (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 that the court can ignore a clear failure in the pleadings 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

Plaintiff's complaint lacks sufficient factual allegations to state any plausible claims against Defendants. A federal court lacks subject matter jurisdiction over an "obviously frivolous complaint." *Chong Su Yi v. Soc. Sec. Admin.*, 554 F. App'x 247, 248 (4th Cir. 2014); *see also Holloway v. Pagan River Dockside Seafood, Inc.*, 669 F.3d 448, 452–53 (4th Cir. 2012) (noting a federal court lacks subject matter jurisdiction over a complaint raising claims "so insubstantial,

implausible . . . or otherwise completely devoid of merit as not to involve a federal controversy"). Complaints "based on allegations that seem delusional, irrational, and wholly beyond belief" are considered factually frivolous. *Brunson v. United States*, C/A No. 3:14-2540-JFA-PJG, 2014 WL 4402803 (D.S.C. Sept. 3, 2014); *see also Brock v. Angelone*, 105 F.3d 952, 953–54 (4th Cir. 1997) (dismissing appeal as frivolous and finding plaintiff's allegation that he was being poisoned or experimented upon fanciful or delusional). The undersigned finds Plaintiff's Complaint lacks sufficient factual allegations to state any plausible claims against Defendants. Accordingly, the undersigned recommends the district judge summarily dismiss the Complaint.

IT IS SO RECOMMENDED.

February 23, 2022
Florence, South Carolina


Kaymani D. West
United States Magistrate Judge

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

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 2317
Florence, South Carolina 29503**

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).