

Scott Harris

U.S. Supreme Court

1 First St. N.E

Washington DC 20543

8-4-2025

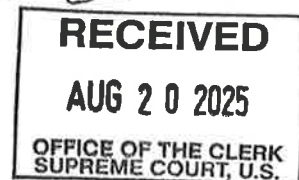
Re: Ricardo Fishbourne v. Alex Munday et al

Appeal # 24-7458

Supplemental to Writ of Cert

Rule 11: A petition for a writ to review a case pending at USCA before judgment will be granted only upon showing that the case is of such importance as to justify deviation from normal appellate practice and to require immediate determination in this court 28 U.S.C. 2102a.

Exh. A held: Pg 8 "Plaintiffs in Imminent danger at SCOT due to a practice that has injured Plaintiff by violent gang members," which requires immediate determination.



No. 24-7458
3:24-cv-4472-JFA-WSB

In The
Supreme Court of The United States

Ricardo Fishbourne - Petitioner

vs.

Alex Mordough et al - Respondents

Motion To Supplement The Writ of
Certiorari. Alleging that since the filing
of this Petition on 5-1-25. The Federal
Judge Joseph F. Anderson has Ruled that
Plaintiffs in Imminent Danger At SEDC...
See Exh. A p. 6-9. Dated 5-20-25.

Rule 11 Already require immediate determination.
However Plaintiff living under imminent danger
begs the Court to Rule on this case... Clearly
once the Court Rules & Remands this case
the Court has to resolve this matter

Some kind of way because the Rule 29 b motion for a new trial has now been removed from Colleton County Court files. Which will get Plaintiff some kind of Relief. A new trial etc.

Only thing preventing new trial is The Ex. B prohibit. See Ex. B The S.C. Supreme Court has violated the 1st Amendment once again on 5-13-25. "Amendment - 1 says Congress shall pass no law that Prohibits citizens right to Petition the Court for Redress." Ex. B is clearly a Prohibit.

See Ex. D Plaintiff did not Ask to file A 29b motion. He advised S.C. Supreme Courts many times that A 29b motion for a new trial was filed in 2010. See Ex. D S.C. Supreme Court is Aware of this 2010 29b motion that's been Pending for 15 yrs. Yet, their Prohibit caused Ex. C injury. Which is the

Cruz of this Petition is to ask
U.S. Supreme Court to enjoin S.C.
Supreme Courts Prohibit issued on
6-15-21 and 5-13-25. Because
its violating clearly established U.S.
Constitutional Right to Prohibit For
Redress. This Federal violation is ongoing.
Again, this Petition is to Prevent ongoing
injury where a 29b motion For A new
trial was Filed in 2010. See Exh. D

This Petition, contrary to Exh. B
Prohibit on 5-13-25, is not to request to
File A 29b motion For A new trial. AS
Plaintiffs 29b motion was Pending since 2010.
The imminent danger at Exh. A And
New Prohibit on 5-20-25 and 5-13-2025
is new. And was not Available on 5-1-2025.
Which begs For this Courts Immediate Determination.

Exh. # **A**

“pattern of past conduct that places an incarcerated person in imminent danger of harm,” satisfy the three-strikes exception. *Id.* (citing *Newkirk v. Kiser*, 812 Fed.Appx. 159, 160 (2020) (“A prisoner who alleges that prison officials continue with a practice that has injured him or others similarly situated in the past will satisfy the ongoing danger standard and meet the imminence prong of the three-strikes exception.”)) (internal quotations omitted).

Relying on “cursory assertions” of imminent danger alleged in the complaint and the material in support of Plaintiff’s IFP motion, the Magistrate Judge found that Plaintiff’s Report largely consist of conclusory allegations of imminent danger unsupported by specific factual allegations. However, Plaintiff has since filed several objections to the Report that allege imminent danger with sufficient specificity.

Plaintiff maintains that the injuries giving rise to this lawsuit would not have occurred but for Defendant Jackson’s post abandonment. Plaintiff now alleges that officers “frequently” leave their housing wing assignments for “hours” at LCI because of staff shortages. (ECF No. 15, pg. 7). Further, Plaintiff claims that one of the March 10 assailants, JJ Bethel, is detained at LCI with Plaintiff. (ECF No. 20, pgs. 1–2).

Additionally, Plaintiff notes that he has been a victim of other violent attacks and threats. Specifically, Plaintiff cites an incident where an inmate stabbed Plaintiff in the arm, resulting in SCDC ordering a “separation.” (ECF No. 1-5, pg. 29). Further, Plaintiff

Exh: #A

identifies three inmates who threatened Plaintiff and broke the television in front of Plaintiff's cell. (ECF No. 20, pg. 4).

Plaintiff's allegations, accepted as true, support the plausibility of imminent danger of physical harm. Plaintiff alleges an ongoing state practice of officers abandoning assigned posts, which he maintains caused the injuries giving rise to this lawsuit. If LCI officials habitually abandon their posts, a victim of prior violence and violent threats is vulnerable to future physical harm, particularly when the victim is housed with a former assailant. Because the Court must liberally construe pro se litigant

R. Civ. P. 15(a)(2); see *U.S. v. Brown*, 797 F. App'x 85, 89 (4th Cir. 2019) ("Federal courts are obliged to liberally construe filings by pro se litigants."); see also *Ostrzenski v. Seigel*, 177 F.3d 245, 252–53 (4th Cir. 1999) (instructing courts to give plaintiffs "every opportunity to cure [] formal [pleading] defects"); see also *Gordon v. Leeke*, 574 F.2d 1147, 1152 (4th Cir. 1978) ("What might be a meritorious claim on the part of a pro se litigant unversed in the law should not be defeated without affording the pleader a reasonable opportunity to articulate his cause of action."). Therefore, the Court finds that Plaintiff has pled facts sufficient to support an ongoing practice that has injured him. Accordingly, Plaintiff may proceed IFP, despite having "three strikes" under the PLRA.

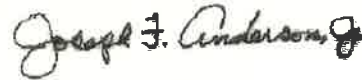
Exh. #5A

V. CONCLUSION

Based on the foregoing, the Court declines to adopt the Report and recommits this case to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

May 20, 2025
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

" Exhibit B 5-13-2025 Prohibit "
" Appendix ~~B~~ B Prohibit "

The Supreme Court of South Carolina

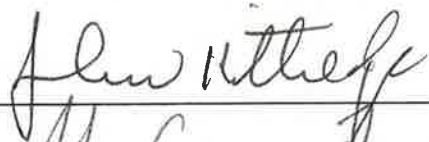

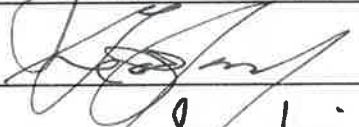
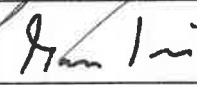

In the Matter of Ricardo Fishburne

Appellate Case No. 2025-000542

ORDER

By order dated June 15, 2021, this Court prohibited Petitioner from filing any further collateral actions in the circuit court, including PCR actions, habeas corpus actions, and any motions relating to previously-filed collateral actions challenging his 2001 convictions and sentences, without first obtaining permission to do so from this Court.

Petitioner has now filed a petition to rescind this Court's June 15, 2021 order so that he may file a Rule 29, SCRCrimP, motion in the circuit court. Petitioner has also filed a petition for sanctions. Petitioner's motions are denied.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
May 13, 2025

Exh B

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF COLLETON) CASE No.s: 2001GS15000415;
2001GS15000416; 2001GS15000417

STATE,)

Vs.)

RICARDO FISHBURNE)
_____)

Order Relieving Counsel

This Matter came before me on the Attorney's petition to be relieved as counsel in this case. It appears that the South Carolina Supreme Court ordered on September 21, 2021 that the Ricardo Fishburne must receive approval from the South Carolina Supreme Court before the before pursuing any action related to his 2001 Colleton County conviction for Murder. The Order is unambiguous, and prohibits ANY action relating to Mr. Fishburne's 2001 conviction. There is no indication that Mr. Fishburne had received permission from the South Carolina Supreme Court prior to commencing the above-entitled petition. It is therefore Ordered that Mr. Fishburne's attorney, David Mathews, be relieved in this case.

AND IT IS SO ORDERED, This 26 day of April, 2023,

Robert Bonds

Hon. Robert Bonds, Resident Circuit Court Judge

APR 26 2023 AM 11:52
COLLETON CO GS, REBECCA H. HILL

Exhs D

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

State of South Carolina,

v.

Ricardo Fishburne,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

Indictment No.(s):
2001GS15000415, 2001GS15000416,
2001GS15000417


**ORDER APPOINTING
ATTORNEY**

This Matter came to the Court on a Rule to Show Cause Motion submitted by the Defendant. The Defendant alleges that new evidence was discovered in 2009 and the Defendant subsequently filed a Motion for a New Trial based on this evidence in 2010. Defendant further alleges that his Motion in 2010 has not been heard.

After reviewing Defendant's Motion, this Court finds that the Public Defender's Office shall be appointed to represent the Defendant.

IT IS SO ORDERED.

COLLETON COUNTY
GENERAL SESSIONS COURT
2021 SEP 24 PM 12:38


The Hon. Robert J. Bonds
Presiding Judge

September 22, 2021

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Ricardo Fishbourne,

Plaintiff,

v.

Director Brian Stirling; Regional Director Willie Davis; Lt. Florenia Jones; Lt. Miquel Cleveland; J. Jackson; Alexandria Jackson; A. Banks; Lt. Randy Ward; Warden Kenneth Nelson; John Doe; Shadaya S. Jackson; Adam Edwards Jr.; Ofc. J.C. Williams; Dr. Spencer F. Robinson; Prisma Health; Dr. Paul G. Thomas; Anntria Banks; Curtis Simpson Jr.; John Doe,

Defendants.

C/A No.: 8:25-cv-1412-JFA

ORDER

I. INTRODUCTION

Ricardo Fishbourne (Plaintiff), proceeding *pro se*, filed this action pursuant to 28 U.S.C. § 1983 for alleged constitutional violations occurring during his confinement at Broad River Correctional Institution. (ECF No. 1).¹ In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), the case was referred to the Magistrate Judge for pretrial proceedings.

¹ Plaintiff previously litigated the same set of facts in *Fishburne v. Stirling*, C/A No. 8:23-cv-5469-TMC (D.S.C.). Plaintiff's prior action was dismissed without prejudice for failure to exhaust administrative remedies. *Id.*, (ECF No. 212).

On March 26, 2025, Plaintiff filed a motion to proceed *in forma pauperis* (IFP)², arguing that he is unable to pay the requisite fees to proceed in this litigation. (ECF No. 7). Additionally, Plaintiff preemptively submitted a document arguing that this case is exempt from the Prison Litigation Reform Act's (PLRA) "three-strikes" rule. (ECF No. 9).

After considering Plaintiff's motion and supporting material, the Magistrate Judge issued a thorough Report and Recommendation (Report), recommending that the Court deny Plaintiff's IFP motion as barred by the three-strikes rule. (ECF No. 11). Plaintiff subsequently filed two sets of objections. (ECF Nos. 15 & 20). Therefore, this matter is ripe for review.

II. FACTS

Plaintiff is an inmate housed at Lieber Correctional Institution (LCI) in Ridgeville, South Carolina. (ECF No. 1-3, pg. 2). Plaintiff's claims concern a March 10, 2022, incident at Plaintiff's former housing facility, Broad River Correctional Institution (BRCI), where alleged prison gang members stabbed Plaintiff in the mouth, chest, and hand. (ECF No. 1, pg. 4); (ECF 1-3, pg. 6). Plaintiff sustained serious injuries during the attack, resulting in his emergency transport to Prisma Health Hospital. (ECF No. 1-3, pg. 6).

² 28 U.S.C. § 1915(a)(1) permits a litigant to commence a federal civil action without prepayment of fees when the litigant submits an affidavit stating that they cannot afford the requisite fees. 28 U.S.C. § 1915(a)(1).

Plaintiff alleges that the gang members attacked him after he “disrespected” BRCI Officer Alexandria Jackson (Defendant Jackson). (ECF No. 1, pg. 4). Further, Plaintiff alleges that Defendant Jackson observed one inmate attack Plaintiff and then left her post before the remaining assailants joined. *Id.* at 4–5. Plaintiff argues that the attack would not have occurred but for Defendant Jackson abandoning her post. *Id.* at 6. Further, Plaintiff contends that Defendant Jackson knew or should have known that Plaintiff was vulnerable to attacks because Plaintiff endured previous violent altercations at BRCI. *Id.*

On March 7, 2025, Plaintiff filed this lawsuit alleging that the conduct of Defendant Jackson and the remaining named defendants constitutes “cruel and unusual treatment,” a “failure to protect,” “deliberate indifference,” and “medical malpractice” in violation of the Eighth and Fourteenth Amendments. (ECF No. 1-3, pg. 4). On March 10, 2025, the Magistrate Judge instructed Plaintiff to pay the filing fee or file an application to proceed without prepayment of the filing fee. (ECF No. 5). Plaintiff subsequently filed his IFP motion and supporting documents. (ECF Nos. 7 & 9). Thereafter, the Magistrate Judge issued the Report recommending that the Court: (1) deny Plaintiff’s motion; and (2) require Plaintiff to pay the filing fee of \$405. For the reasons discussed below, the Court declines to adopt the Report and recommits the case back to the Magistrate Judge for further proceedings.

III. LEGAL STANDARD

The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify,

in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). However, a district court is only required to conduct a *de novo* review of the specific portions of the Magistrate Judge's Report to which an objection is made. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); *Carniewski v. W. Virginia Bd. of Prob. & Parole*, 974 F.2d 1330 (4th Cir. 1992). In the absence of specific objections to portions of the Report of the Magistrate, this court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Thus, the court must only review those portions of the Report to which Petitioner has made a specific written objection. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

“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.’” *Dunlap v. TM Trucking of the Carolinas, LLC*, No. 0:15-cv-04009-JMC, 2017 WL 6345402, at *5 n.6 (D.S.C. Dec. 12, 2017) (citing *One Parcel of Real Prop. Known as 2121 E. 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996)). A specific objection to the Magistrate Judge's Report thus requires more than a reassertion of arguments from the complaint or a mere citation to legal authorities. *See Workman v. Perry*, No. 6:17-cv-00765-RBH, 2017 WL 4791150, at *1 (D.S.C. Oct. 23, 2017). A specific objection must “direct the court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

“Generally stated, nonspecific objections have the same effect as would a failure to object.” *Staley v. Norton*, No. 9:07-0288-PMD, 2007 WL 821181, at *1 (D.S.C. Mar. 2, 2007) (citing *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991)). The court reviews portions “not objected to—including those portions to which only ‘general and conclusory’ objections have been made—for *clear error*.” *Id.* (emphasis added) (citing *Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 200; *Orpiano*, 687 F.2d at 47).

IV. DISCUSSION

The Magistrate Judge opined that Plaintiff is barred from proceeding IFP because of 28 U.S.C. § 1915(g)’s “three-strikes” rule. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). The Magistrate Judge identified at least three prior lawsuits³ which count as “strikes” under § 1915(g):

1. *Fishbourne v. Colleton Cnty. Sol. Off.*, C/A No. 2:20-cv-122-TMC-JDA, ECF No. 50 (D.S.C. Apr. 7, 2020) (strike because dismissed as frivolous and barred by *Heck v. Humphrey*, 512 U.S. 477 (1994)); see *Brunson v. Stein*, 116 F.4th 301, 309 (4th Cir. 2024) (“[T]he dismissal of an action under *Heck* is a dismissal for failure to state claim and thus a strike under the PLRA.”).

³ The Magistrate Judge also noted that Plaintiff has filed at least eleven cases in this district, several of which qualify as strikes under the PLRA.

2. *Fishbourne v. F.B.I.*, C/A No. 8:20-cv-1480-TMC-JDA, ECF No. 26 (D.S.C. May 28, 2020) (strike because dismissed for failure to state a claim and as frivolous).
3. *Fishbourne v. Williams*, C/A No. 8:21-cv-2964-TMC-JDA, ECF No. 29 (D.S.C. Jun. 30, 2022) (strike because dismissed as frivolous).

Accordingly, Plaintiff cannot proceed IFP unless his claim satisfies the exception for imminent physical harm provided by the three-strikes rule. *See* 28 U.S.C. § 1915(g). The Magistrate Judge concluded that Plaintiff's complaint and submission in support of his IFP application fail to allege facts supporting Plaintiff's imminent danger of serious physical injury.

"The imminent danger exception is essentially a pleading requirement subject to the ordinary principles of notice pleading." *Holley v. Combs*, 134 F.4th 142, 145 (4th Cir. 2025). Accordingly, while courts have "broad discretion" to decide whether a litigant confronts imminent danger sufficient to overcome the three-strikes rule, *Hall v. U.S.*, 44 F.4th 218, 224 (4th Cir. 2022), they must accept "well-pleaded allegations as true." *Holley*, 134 F.4th at 145.

To show imminent danger of physical harm, the litigant must "allege sufficient specific facts to demonstrate a nexus between the claims presented and the imminent danger alleged." *Hall*, 44 F.4th at 230. Generally, the alleged imminent danger must "exist contemporaneously when the action is filed." *Id.* at 224. However, courts may consider allegations of "past dangers or past threats of danger" when assessing alleged imminent danger. *Id.* Although "past allegations of danger or threats of harm on their own are insufficient to satisfy the [three-strikes] exception," allegations of an ongoing

“pattern of past conduct that places an incarcerated person in imminent danger of harm,” satisfy the three-strikes exception. *Id.* (citing *Newkirk v. Kiser*, 812 Fed.Appx. 159, 160 (2020) (“A prisoner who alleges that prison officials continue with a practice that has injured him or others similarly situated in the past will satisfy the ongoing danger standard and meet the imminence prong of the three-strikes exception.”)) (internal quotations omitted).

Relying on “cursory assertions” of imminent danger alleged in the complaint and the material in support of Plaintiff’s IFP motion, the Magistrate Judge found that Plaintiff did not adequately allege imminent danger sufficient to satisfy the three-strikes exception. (ECF No. 11, pgs. 9–10). The Court agrees that Plaintiff’s original filings largely consist of conclusory allegations of imminent danger unsupported by specific factual allegations. However, Plaintiff has since filed several objections to the Report that allege imminent danger with sufficient specificity.

Plaintiff maintains that the injuries giving rise to this lawsuit would not have occurred but for Defendant Jackson’s post abandonment. Plaintiff now alleges that officers “frequently” leave their housing wing assignments for “hours” at LCI because of staff shortages. (ECF No. 15, pg. 7). Further, Plaintiff claims that one of the March 10 assailants, JJ Bethel, is detained at LCI with Plaintiff. (ECF No. 20, pgs. 1–2).

Additionally, Plaintiff notes that he has been a victim of other violent attacks and threats. Specifically, Plaintiff cites an incident where an inmate stabbed Plaintiff in the arm, resulting in SCDC ordering a “separation.” (ECF No. 1-5, pg. 29). Further, Plaintiff

identifies three inmates who threatened Plaintiff and broke the television in front of Plaintiff's cell. (ECF No. 20, pg. 4).

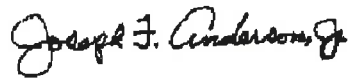
Plaintiff's allegations, accepted as true, support the plausibility of imminent danger of physical harm. Plaintiff alleges an ongoing state practice of officers abandoning assigned posts, which he maintains caused the injuries giving rise to this lawsuit. If LCI officials habitually abandon their posts, a victim of prior violence and violent threats is vulnerable to future physical harm, particularly when the victim is housed with a former assailant. Because the Court must liberally construe pro se litigant filings, it interprets the additional factual allegations contained in Plaintiff's objections as a motion to amend the complaint pursuant to Federal Civil Procedure Rule 15(a)(2). Fed. R. Civ. P. 15(a)(2); *see U.S. v. Brown*, 797 F.App'x 85, 89 (4th Cir. 2019) ("Federal courts are obliged to liberally construe filings by pro se litigants."); *see also Ostrzenski v. Seigel*, 177 F.3d 245, 252–53 (4th Cir. 1999) (instructing courts to give plaintiffs "every opportunity to cure [] formal [pleading] defects"); *see also Gordon v. Leeke*, 574 F.2d 1147, 1152 (4th Cir. 1978) ("What might be a meritorious claim on the part of a pro se litigant unversed in the law should not be defeated without affording the pleader a reasonable opportunity to articulate his cause of action."). Therefore, the Court finds that Plaintiff has pled facts sufficient to support an ongoing practice that has injured him. Accordingly, Plaintiff may proceed IFP, despite having "three strikes" under the PLRA.

V. CONCLUSION

Based on the foregoing, the Court declines to adopt the Report and recommits this case to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

May 20, 2025
Columbia, South Carolina

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge