UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-7106

JOHN WILLIE MACK, JR.,

Plaintiff - Appellant,

v.

BARRY JOE BARNETTE, Solicitor, State of South Carolina; JOHN DAVID BURGESS, Spartanburg City Police; MANUEL J. ORTUNO, Forensics Analyst of South Carolina Law Enforcement Division,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. David C. Norton, District Judge. (7:24-cv-03401-DCN)

Submitted: August 28, 2025 Decided: September 2, 2025

Before GREGORY, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

John Willie Mack, Jr., Appellant Pro Se.

PER CURIAM:

John Willie Mack, Jr., appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on Mack's 42 U.S.C. § 1983 complaint. We have reviewed the record and discern no reversible error. Accordingly, we deny Mack's motion to appoint counsel and affirm the district court's order. *Mack v. Barnette*, No. 7:24-cv-03401-DCN (D.S.C. Oct. 17, 2024). 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

John Willie Mack, Jr., Plaintiff, vs. Barry Joe Barnette; John David Burgess; and Manuel J. Ortund, Defendants.	C/A No.: 7:24-cv-3401 DCN

The above referenced case is before this court upon the magistrate judge's recommendation that this action be dismissed without prejudice, without leave to amend, and without issuance and service of process.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v. Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).[1] **Objections to the Magistrate Judge's Report and Recommendation were timely filed on October 10, 2024 by plaintiff.**

[1] In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's Report and Recommendation is **AFFIRMED** and incorporated into this order. This case is hereby **DISMISSED** without prejudice, without leave to amend, and without issuance and service of process.

AND IT IS SO ORDERED.

David C. Norton
United States District Judge

October 17, 2024
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

John Willie Mack, Jr., Plaintiff,	)	C/A No. 7:24-cv-03401-DCN-MHC
v.	)	**REPORT AND RECOMMENDATION**
Barry Joe Barnette, John David Burgess, Manuel J. Ortund, Defendants.	)	

This a civil action filed by Plaintiff John Willie Mack, Jr., a state prisoner who is proceeding pro se and in forma pauperis. 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 August 30, 2024, Plaintiff was given a specific time frame in which to bring this case into proper form. Plaintiff has complied with the Court's Order, and this case is now in proper form.

I. BACKGROUND

Plaintiff is an inmate at the Evans Correctional Institution of the South Carolina Department of Corrections (SCDC). He brings claims against Solicitor Barry Joe Barnette (Barnette), Spartanburg County Police Officer John David Burgess (Burgess), and South Carolina Law Enforcement Division Forensics Analyst Manuel J. Ortund (Ortund). Plaintiff was convicted (jury trial) in February 2011 of burglary in the first degree and grand larceny. Plaintiff has filed a number of cases under 42 U.S.C. § 1983 (§ 1983) as well as habeas cases challenging his convictions. He again appears to allege that his constitutional rights were violated because he was

convicted based DNA evidence, but the "tangible items" from which the DNA swabs were taken were never turned over to him.

Plaintiff alleges violations of his Fifth, Sixth, and Fourteenth Amendment rights. ECF No. 1 at 4. As relief, Plaintiff states that he only wants to be provided with the "tangible object[s]." He does not specify what objects he wants produced. However, the Court may take judicial notice of Plaintiff's previous § 1983 case in this Court in which he requested tangible objects (a light switch, a bookshelf, and an entertainment center) from which DNA swabs were taken.[1] DNA evidence was presented in the jury trial. *See Mack v. Burgess*, No. 9:15-CV-2128 DCN, 2015 WL 4885212 (D.S.C. Aug. 14, 2015), *aff'd*, 632 F. App'x 165 (4th Cir. 2016). Plaintiff also submitted a copy of a transcript from a hearing held in the Court of General Sessions for the County of Spartanburg on October 31, 2014. ECF No. 1-4 at 14-25. At that hearing, it is noted that a light switch, an entertainment center, and a bookshelf were swabbed for DNA evidence, and that Plaintiff was requesting those tangible objects to allow additional DNA testing. *Id.* at 16-17.

II. STANDARD OF REVIEW

A pro se Complaint is reviewed pursuant to the procedural provisions of 28 U.S.C. § 1915, the Prison Litigation Reform Act, Pub. L. No. 104–134, 110 Stat. 1321 (1996), and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992), *Neitzke v. Williams*, 490 U.S. 319 (1989), *Haines v. Kerner*, 404 U.S. 519 (1972), and *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983). *Pro se* complaints are held to a less stringent standard than those drafted by attorneys, and a court is charged with liberally construing a complaint 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);

[1] *See Aloe Creme Lab., Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir. 1970) (noting that the district court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time).

King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). However, 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").

III. DISCUSSION

It is recommended that this action be summarily dismissed for the reasons discussed below.

A. Lack of Jurisdiction

To the extent that Plaintiff is attempting to appeal the results of the state court rulings, including his postconviction DNA proceedings, the current action should be dismissed for lack of jurisdiction because federal district courts do not hear "appeals" from state court actions. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476-82 (1983) (a federal district court lacks authority to review final determinations of state or local courts because such review can only be conducted by the Supreme Court of the United States under 28 U.S.C. § 1257); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *see also Hulsey v. Cisa*, 947 F.3d 246 (4th Cir. 2020). To rule in favor of Plaintiff on claims filed in this action may require this court to overrule and reverse orders and rulings made in the state court. Such a result is prohibited under the *Rooker–Feldman* doctrine. *See Davani v. Virginia Dep't. of Transp.*, 434 F.3d 712, 719-720 (4th Cir. 2006); *see also Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 293-294 (2005); *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 201 (4th Cir. 1997).[2]

[2] The *Rooker-Feldman* doctrine is applicable both to claims at issue in a state court order and to claims that are "inextricably intertwined" with such an order. *See Exxon Mobil*, 544 U.S. at 284. Plaintiff has not alleged any facts to indicate that this is a case where the federal complaint raises claims independent of, but in tension with, a state court judgment such that the *Rooker-Feldman* doctrine would not be an impediment to the exercise of federal jurisdiction. *See Vicks v. Ocwen Loan Servicing, LLC*, 676 F. App'x 167 (4th Cir. 2017) (district court erred in applying *Rooker-*

Appeals of orders issued by lower state courts must go to a higher state court. Secondly, the Congress, for more than two hundred years, has provided that only the Supreme Court of the United States may review (review is discretionary by way of a writ of certiorari and is not an appeal of right) a decision of a state's highest court. *See* 28 U.S.C. § 1257; *Ernst v. Child and Youth Servs.*, 108 F.3d 486, 491(3d Cir. 1997). This Court cannot sit in judgment of a state court decision, and must dismiss the case for lack of subject matter jurisdiction. *See, e.g., Moore v. Commonwealth of Virginia Dep't of Soc. Servs.*, No. 3:15CV515, 2016 WL 775783, at *5 (E.D. Va. Feb. 25, 2016).

B. *Younger*

Additionally, to the extent Plaintiff may be requesting that this Court intervene in any pending state court action, including any post-conviction relief or DNA proceedings, this action is subject to summary dismissal. Federal courts, absent extraordinary circumstances, are not authorized to interfere with a State's pending criminal proceedings. *See, e.g., Younger v. Harris*, 401 U.S. 37, 44 (1971); *Cinema Blue of Charlotte, Inc. v. Gilchrist*, 887 F.2d 49, 50-53 (4th Cir. 1989). Specifically, the *Younger* Court 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 43-44; *see also Howell v. Wilson*, No. 4:13–2812–JFA–TER, 2014 WL 1233703, at *3 (D.S.C. Mar. 25, 2014) (Plaintiff's "pending DNA application and his PCR applications are still part of his 'pending criminal case' as that terminology is understood under *Younger* and its progeny."); *Smith v. Bravo*, No. 99 C 5077, 2000 WL 1051855, *5 (N.D. Ill. 2000) (presuming that *Younger* abstention would apply to civil case that could interfere with post–

Feldman doctrine to bar appellants' claims where the claims did "not seek appellate review of [the state court] order or fairly allege injury caused by the state court in entering that order"); *Thana v. Bd. of Licenser Comm'rs for Charles Cty., Md.*, 827 F.3d 314, 320 (4th Cir. 2016) (*Rooker-Feldman* doctrine is not an impediment to the exercise of federal jurisdiction when the federal complaint raises claims independent of, but in tension with, a state court judgment simply because the same or related question was aired earlier by the parties in state court).

conviction proceedings); *Lockheart v. Chicago Police Dept.*, No. 95 C 343, 1999 WL 639179, *2 (N.D. Ill. Aug. 17, 1999) (applying *Younger* because post-conviction proceedings were pending).

C. Mandamus Relief

To the extent Plaintiff is requesting mandamus relief, this action should be dismissed because a writ of mandamus is a drastic remedy which is infrequently used by federal courts and is usually limited to cases where a federal court is acting in aid of its own jurisdiction. *See* 28 U.S.C. § 1361; *Gurley v. Superior Court of Mecklenburg Cnty.*, 411 F.2d 586, 587–88 & nn. 2–4 (4th Cir.1969). Additionally, a federal district court may generally issue a writ of mandamus only against an employee or official of the United States. *See Moye v. Clerk, DeKalb County Sup. Court*, 474 F.2d 1275, 1275–76 (5th Cir.1973) (federal courts do not have original jurisdiction over mandamus actions to compel an officer or employee of a state to perform a duty owed to the petitioner); *see also In re Campbell*, 264 F.3d 730, 731 (7th Cir. 2001) (collecting cases); *In re Carr*, 803 F.2d 1180, 1180 (4th Cir. Oct.24, 1986). *In Davis v. Lansing*, 851 F.2d 72 (2d Cir.1988), the Court of Appeals for the Second Circuit ruled that "[t]he federal courts have no general power to compel action by state officials[.]" *Id.* at 74; *see also Craigo v. Hey*, 624 F. Supp. 414 (S.D.W.Va. 1985). Here, Plaintiff has only named state (not federal) officials as Defendants.

D. Due Process Claims

Plaintiff appears to allege that his due process rights were violated because he was not provided with the tangible objects and requests that this Court order that Defendants provide him with the items. However, even if this Court has jurisdiction and can order such relief, Plaintiff has alleged no facts to indicate that Defendants are in possession of the tangible objects or that these items even exist at this time. At the DNA hearing, Defendant Barnette stated that the items were previously tested, the victim moved to Canada shortly after that time, and the items no longer existed. ECF No. 1-4 at 18-19. Additionally, as noted by the Supreme Court of South Carolina:

> Notably, blood was found on [the victim's] entertainment center in the living room, on a bookshelf in the hallway, and on the wall near a light switch in the bedroom. Law enforcement swabbed the blood and sent the evidence to the State Law Enforcement Division ("SLED") for DNA testing. **The physical items containing the blood were not collected or preserved.**

Mack v. State, 858 S.E.2d 160, 161 (S.C. 2021) (emphasis added). "As no evidence exists to be tested, [the plaintiff] cannot assert a plausible due process claim." *Washington v. Lehigh Cnty. Dist. Attorney's Off.*, 541 F. Supp. 3d 536, 546 (E.D. Pa. 2021) (noting that a core defect in the plaintiff's procedural due process claim was the absence of any evidence that the subject material to be tested existed where the state court found that no evidence existed and the plaintiff had not established that the evidence still existed, was in the possession of the State or the court, or was withheld by a government official). Here, any due process claim should be summarily dismissed because Plaintiff has not alleged any plausible facts to indicate that these tangible items still exist or that they are in Defendants' possession.

E. Prosecutorial Immunity – Defendant Barnette

Defendant Barnette should also be summarily dismissed as a defendant because he is entitled to prosecutorial immunity. Prosecutors have absolute immunity from damages for activities performed as "an officer of the court" where the conduct at issue was closely associated with the judicial phase of the criminal process. *See Van de Kamp v. Goldstein*, 555 U.S. 335, 341-343 (2009); *see also Hendricks v. Bogle*, 3:13-CV-2733-DCN, 2013 WL 6183982, at *2 (D.S.C. Nov. 25, 2013) ("In South Carolina, the Attorney General and his assistants function as prosecutors in criminal appeals [and] post-conviction relief actions, ... [and they have] absolute immunity for their prosecution-related activities in or connected with judicial proceedings."); *Pressley v. McMaster*, No. 3:14-cv-04025-JMC, 2015 WL 5178505, at *4 (D.S.C. Sept. 4, 2015) ("Representing the state's interest in criminal appeals or otherwise defending the validity of a conviction or sentence on appeal or in post-conviction proceedings is 'intimately associated with

the judicial phase of the criminal process,' and thus constitutes an immune function.") For example, when a prosecutor "prepares to initiate a judicial proceeding," "appears in court to present evidence in support of a search warrant application," or conducts a criminal trial, bond hearings, grand jury proceedings, and pre-trial "motions" hearings, absolute immunity applies. *Van de Kamp v. Goldstein*, 555 U.S. at 343; *see also Buckley v. Fitzsimmons*, 509 U.S. 259 (1993); *Dababnah v. Keller–Burnside*, 208 F.3d 467 (4th Cir. 2000). Therefore, because Plaintiff is attempting to assert a claim against Defendant Barnette based on Barnette's participation in Plaintiff's criminal proceedings (including post-conviction proceedings), his claims against Barnette are barred. *See Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (absolute immunity "is an immunity from suit rather than a mere defense to liability") (emphasis in original); *see also Savage v. Maryland*, 896 F.3d 260, 268 (4th Cir. 2018) ("In *Imbler v. Pachtman*, 424 U.S. 409, 430-32 [] (1976), the Supreme Court held that prosecutors are absolutely immune from damages liability when they act as advocates for the State.").

IV. RECOMMENDATION

Based on the foregoing, it is recommended that the Court dismiss this action, without prejudice, without leave to amend,[3] and without issuance and service of process.

Plaintiff's attention is directed to the important notice on the following page.

Molly H. Cherry
United States Magistrate Judge

September 18, 2024
Charleston, South Carolina

[3] Here, any attempt to cure the deficiencies in the complaint would be futile for the reasons discussed above. *See Britt v. DeJoy*, 45 F.4th 790 (4th Cir. 2022) (noting that "[w]hen a district court dismisses a complaint or all claims without granting leave to amend, its order is final and appealable").

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).