

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
CAROLINA

**Tomongo James William McCord v. Detective Kelly Freshman, Chief
of Police Gregory G. Mullen, City of Charleston, Assistant Solicitor
Debbie Herring-Lash, Assistant Solicitor Lauren Frierson, Solicitor
Scarlett A. Wilson, Supervisory Officer John Doe/Jane Roe**

McCord · No. 2:25-cv-11345-RMG · Decided March 24, 2026

SUMMARY

The United States District Court for the District of South Carolina vacates its prior order and conducts a de novo review of the plaintiff’s objections to a Report and Recommendation recommending partial summary dismissal. The court dismisses claims against all defendants except Detective Kelly Freshman, dismisses claims relating to the plaintiff’s 1999 convictions under Heck v. Humphrey, and permits service of the remaining malicious prosecution claim concerning a 2018 charge against Freshman.

CASE DETAILS

COURT	United States District Court for the District of South Carolina
WRITING FOR THE COURT	Richard Mark Gergel
JURISDICTION	United States District Court for the District of South Carolina
DECIDED	March 24, 2026
DOCKET	2:25-cv-11345-RMG
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending partial summary dismissal of a pro se prisoner's 42 U.S.C. § 1983 action. Although the plaintiff's objections were untimely, the court vacated its prior order and considered the objections de novo before adopting the Report and Recommendation.
STANDARD OF REVIEW	A magistrate judge's Report and Recommendation has no presumptive weight, and the district court retains responsibility for the final determination. Because the plaintiff's objections were untimely, the

	court ordinarily would review only for clear error, but it elected to conduct de novo review in light of the plaintiff's pro se prisoner status.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Tomongo James William McCord v. Detective Kelly Freshman, Chief of Police Gregory G. Mullen, City of Charleston, Assistant Solicitor Debbie Herring-Lash, Assistant Solicitor Lauren Frierson, Solicitor Scarlett A. Wilson, Supervisory Officer John Doe/Jane Roe

TOPICS

section 1983 prisoners rights civil rights civil procedure post-conviction relief

PRACTICE AREAS

civil rights litigation prisoner litigation federal civil procedure constitutional torts

QUESTIONS PRESENTED

1. Whether the district court should review the magistrate judge's Report and Recommendation de novo despite the plaintiff's untimely objections.
2. Whether the complaint adequately alleged constitutional violations or supervisory liability against Mullen, Wilson, and Doe/Roe.
3. Whether Herring-Lash, Frierson, and Wilson were entitled to prosecutorial immunity for conduct connected to the plaintiff's criminal proceedings.
4. Whether the complaint adequately alleged municipal liability against the City of Charleston.
5. Whether claims relating to the plaintiff's 1999 convictions were barred by Heck v. Humphrey.
6. Whether the remaining malicious-prosecution claim concerning the 2018 charge should proceed against Freshman.

HOLDINGS

1. The district court may accept, reject, or modify a magistrate judge's recommendation because the recommendation has no presumptive weight; although untimely objections ordinarily require only clear-error review, the court elected to review the plaintiff's objections de novo.
2. The complaint failed to state a claim against Mullen, Wilson, or Doe/Roe because it alleged no specific facts showing that those defendants violated McCord's constitutional rights, and the supervisory-liability allegations did not satisfy the governing elements.
3. Herring-Lash, Frierson, and Wilson were entitled to prosecutorial immunity because the claims against them were based on their participation in McCord's criminal proceedings.
4. The municipal-liability claim against the City of Charleston failed because the complaint did not identify an official policy, custom, or practice that caused a constitutional violation.

5. Claims relating to McCord's 1999 convictions were barred by *Heck v. Humphrey* because McCord did not allege that the convictions had been invalidated and a favorable judgment would question their validity or the validity of his sentences.
6. The complaint was permitted to proceed against Freshman on the malicious-prosecution claim concerning the 2018 first-degree criminal sexual conduct with a minor charge, and the complaint was to be served on Freshman.

KEY QUOTATIONS

“The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court.” (at 1)

“Defendants Mullen, the City of Charleston, Herring-Lash, Frierson, Wilson, and Doe/Roe are DISMISSED as parties to this action.” (at 3)

“The Complaint shall be served on Defendant Freshman as to the remaining malicious prosecution claim.” (at 3)

FACTUAL BACKGROUND

McCord, a state prisoner proceeding pro se, brought constitutional claims under 42 U.S.C. § 1983 against a detective, police chief, the City of Charleston, prosecutors, and a supervisory officer. The complaint related in part to McCord's 1999 convictions and in part to a 2018 first-degree criminal sexual conduct with a minor charge. The court found no specific facts supporting constitutional violations by several defendants, no facts establishing supervisory or municipal liability, and no basis to avoid prosecutorial immunity or the Heck bar.

PROCEDURAL HISTORY

The magistrate judge recommended dismissing defendants Mullen, the City of Charleston, Herring-Lash, Frierson, Wilson, and Doe/Roe, dismissing claims relating to the plaintiff's 1999 convictions, and serving the complaint on Freshman on a malicious-prosecution claim concerning a 2018 charge. The district court initially adopted the recommendation, then vacated that order after receiving the plaintiff's untimely objections. On de novo review, the court overruled the objections, adopted the Report and Recommendation, dismissed the specified defendants and 1999-conviction claims, and directed service on Freshman.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The complaint shall be served on Defendant Freshman as to the remaining malicious-prosecution claim concerning the 2018 charge.

CASES CITED

- *Mathews v. Weber*, 423 U.S. 261 (1976)

- *Diamond v. Colonial Life & Accident Insurance Co.*, 416 F.3d 310 (4th Cir. 2005)
- *Wilkins v. Montgomery*, 751 F.3d 214, 226 (4th Cir. 2014)
- *Van de Kamp v. Goldstein*, 555 U.S. 335, 341-43 (2009)
- *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978)
- *Heck v. Humphrey*, 512 U.S. 477 (1994)

OPINION

IN THE UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION Tomongo James William McCord, Case No. 2:25-cv-11345-RMG
Plaintiff, v. AMENDED ORDER Detective Kelly Freshman, Chief of Police Gregory G. Mullen,
City of Charleston, Assistant Solicitor Debbie Herring-Lash, Assistant Solicitor Lauren Frierson,
Solicitor Scarlett A. Wilson, Supervisory Officer John Doe/Jane Roe, Defendants.

This matter comes before the Court on the Report and Recommendation (R & R) of the Magistrate Judge recommending partial summary dismissal. (Dkt. No. 14). Specifically, the Magistrate Judge recommended that Defendants Mullen, the City of Charleston, Herring-Lash, Frierson, Wilson, and Doe/Roe be summarily dismissed as parties to this action, and that any claims relating to Plaintiff's 1999 convictions be dismissed.

The Magistrate Judge further recommended that the Complaint be served on Defendant Freshman as to the malicious prosecution claim concerning the 2018 first-degree criminal sexual conduct with a minor charge. Any objections to the R & R were due February 29, 2026 (February 26, 2026 plus three days if the objections were submitted by mail). (Dkt. No. 17 at 11).

No party filed objections. The Court entered an order on March 6, 2026 adopting the R & R of the Magistrate Judge and summarily dismissing all defendants except Defendant Freshman. (Dkt. No. 17). 1 The Court received Plaintiff's untimely objections of March 6, 2026 after its order was issued. Recognizing that Plaintiff is a state prisoner acting pro se, the Court has elected to vacate its prior order and address Defendant's objections de novo.

Legal Standard The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976).

In the absence of timely filed objections, the Court need not conduct a de novo review but 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). **Discussion** The Court has reviewed the Report and Recommendation, Plaintiff's objections, and the record in this case.

As the Magistrate Judge correctly determined, the Complaint fails to allege any specific facts to support a claim that Defendants Mullen, Wilson, or Doe/Roe violated Plaintiff's constitutional rights. (Dkt. No. 14 at 5–6).

The Magistrate Judge also properly found that any supervisory liability claims against these Defendants fail because Plaintiff has not alleged facts satisfying the elements set forth in *Wilkins v. Montgomery*, 751 F.3d 214, 226 (4th Cir. 2014). (Dkt. No. 14 at 6). Further, the Magistrate Judge correctly concluded that Defendants Herring-Lash, Frierson, and Wilson are entitled to prosecutorial immunity because Plaintiff's claims against them are based on their participation in his criminal proceedings.

(Dkt. No. 14 at 7–8); see *Van de Kamp v. Goldstein*, 555 U.S. 335, 341–43 (2009). The Magistrate Judge also properly determined that Plaintiff's municipal liability claim against the City of Charleston fails because the Complaint does not identify any official policy, custom, or practice that caused a constitutional violation. (Dkt. No. 14 at 8–10); see *Monell v. Dep't of Soc.*

Servs., 436 U.S. 658, 690 (1978). Finally, the Magistrate Judge correctly found that any claims relating to Plaintiff's 1999 convictions are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because Plaintiff has not alleged that those convictions have been invalidated, and a favorable determination on Plaintiff's § 1983 claims would question the validity of his convictions and sentences.

(Dkt. No. 14 at 6–7). Defendant's objections to the R & R—which largely repeat the alleged factual basis for Plaintiff's claims—fail to address the legal deficiencies identified by the Magistrate Judge in the complaint.

The Court overrules the objections of the Plaintiff regarding the partial summary dismissal of Defendants Mullen, the City of Charleston, Herring-Lash, Frierson, Wilson, and Doe/Roe. The Court also overrules the objections of the Plaintiff regarding the summary dismissal of claims relating to his 1999 conviction.

Accordingly, the Court ADOPTS the Report and Recommendation as the Order of the Court. (Dkt. No. 14). Defendants Mullen, the City of Charleston, Herring-Lash, Frierson, Wilson, and Doe/Roe are DISMISSED as parties to this action. Any claims relating to Plaintiff's 1999 convictions are DISMISSED.

The Complaint shall be served on Defendant Freshman as to the remaining malicious prosecution claim. AND IT IS SO ORDERED. s/ Richard Mark Gergel Richard Mark Gergel United States District Judge March 24, 2026 Charleston, South Carolina 3