

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON L. SANDERS,

Plaintiff,

Case No. 1:07-cv-360

v

HON. JANET T. NEFF

UNKNOWN BACHUS et al.,

Defendant.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 alleging Eighth Amendment violations and First Amendment retaliation. Defendant Schilling, also identified by Plaintiff as Scheiling, is the only remaining defendant, all others having been previously dismissed or granted summary judgment. Defendant Schilling filed a motion for summary judgment, arguing that Plaintiff failed to exhaust his available administrative remedies. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation recommending that this Court grant Defendant's motion for that reason and enter judgment for Defendants. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections for the following reasons.

Plaintiff first objects to the Magistrate Judge's opinion in its entirety, arguing that he was in compliance with Michigan Department of Corrections (MDOC) policies at all times relevant to his claim (Dkt 58 at ¶ 1). As merely a conclusory disagreement with the Magistrate Judge's opinion, Plaintiff's objection is without merit and is denied. Plaintiff also argues that the Magistrate Judge erred by applying the 2007 version of MDOC Policy Directive 03.02.130 when the 2003 version should have been applied (Dkt 58 at ¶ 4). This argument is also without merit. The Magistrate Judge properly applied the 2003 version of the MDOC Policy Directive. Therefore, Plaintiff's objection is denied.

Consequently, the Court adopts the Report and Recommendation as the opinion of this Court. For the reasons expressed and because this action was filed *in forma pauperis*, this Court also will also certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997).

Accordingly:

IT IS HEREBY ORDERED that Plaintiff's Objections (Dkt 58) are DENIED and the Report and Recommendation (Dkt 57) is APPROVED and ADOPTED as the Opinion of this Court.

IT IS FURTHER ORDERED that Defendant Schilling's Motion for Summary Judgment (Dkt 51) is GRANTED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

A Judgment will be entered consistent with this Opinion and Order.

Dated: December 9, 2009

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge