

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

COREY DURAN STEWARD

PLAINTIFF

v.

Case No. 2:14-CV-02201

DEPUTY DONALD KING, Sebastian County  
Detention Center (“SCDC”); SGT. TAULBEY, SCDC;  
JOHN DOE JAIL ADMINISTRATORS; and  
CAPTAIN DEVANE

DEFENDANTS

**ORDER**

Currently before the Court are the proposed findings and recommendations (Doc. 20) of the Honorable Mark E. Ford, United States Magistrate Judge for the Western District of Arkansas. The Court has conducted a careful review of the findings and recommendations and has reviewed the record *de novo* as to any issues raised by Plaintiff in his objections (Doc. 23).

Having conducted such review, the Court finds that the report and recommendation should be ADOPTED IN PART. While the Court agrees with and adopts the analysis and general findings contained in the magistrate’s report, the Court declines to adopt the Magistrate’s ultimate recommendation that Plaintiff’s claim for failure to protect against Defendant King in his individual capacity should be dismissed at this point in the litigation. The Magistrate rightly recognized that the claim should be subject to dismissal where Plaintiff characterized King’s actions in releasing a violent inmate into the general jail population as a “mistake.” Plaintiff is, however, proceeding *pro se*, and his filings may be liberally construed. In his objections, Plaintiff acknowledges that his use of the word “mistake” was “incorrect to describe [sic] the situation.” (Doc. 23). Plaintiff alleges that “Deputy King known [sic] the risk of releasing that inmate on segregation out of his cell” and that

“Deputy King had admitted before the committee his wrongdoing as well did he to me [sic].” *Id.* In making this clarification in his objections, the Court recognizes that Plaintiff is making an implicit request to amend his complaint, which request the Court will grant pursuant to Federal Rule of Civil Procedure 15(a)(2).

The Court otherwise finds that Plaintiff’s objections offer neither law nor fact requiring departure from the Magistrate’s findings and recommendations, and that the Magistrate’s report does not otherwise contain any clear error.

Accordingly, for the reasons stated in the Magistrate’s report and recommendations and herein, IT IS ORDERED that Defendants’ motions to dismiss (Doc. 11) is GRANTED IN PART and DENIED IN PART. The motion is GRANTED insofar as all of Plaintiff’s official-capacity claims, and all individual-capacity claims for failure to protect against the Doe Defendants, Taulbey, and Devane are DISMISSED WITHOUT PREJUDICE for failure to state a claim. The motion is further GRANTED insofar as Plaintiff’s claim for denial of medical care against Defendant Devane is DISMISSED WITHOUT PREJUDICE for failure to state a claim.

The motion is DENIED in all other respects, leaving for adjudication Plaintiff’s remaining individual-capacity claims for denial of medical care and Plaintiff’s individual-capacity claim against Defendant King for failure to protect.

The clerk is directed to file Plaintiff’s objections (Doc. 23) together with his original complaint (Doc. 2) as an “Amended Complaint.” The remaining Defendants will have ten days to file any response.

IT IS SO ORDERED this 2nd day of October, 2015.

*/s/ P. K. Holmes, III*

P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE