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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RODNEY LAMONT DOWD,

CASE NO. 1:07-cv-01505 OWW DLB PC

Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DISMISSING
DEFENDANTS YATES AND BONNER FROM
ACTION WITH PREJUDICE

v.

JAMES YATES, et al.,

(Doc. 18)

Defendants.

Plaintiff Rodney Lamont Dowd (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On November 17, 2008, the Magistrate Judge filed a [Findings and Recommendations](#) herein which was served on plaintiff and which contained notice to plaintiff that any objection to the Findings and Recommendations was to be filed within twenty days. In the Findings and Recommendations, the Magistrate Judge recommended that defendants Yates and Bonner be dismissed from the action for Plaintiff’s failure to state any claims upon which relief may be granted against them. (Doc. 18).

Plaintiff filed an [Objection to the Findings and Recommendations](#) on December 8, 2008. (Doc. 19). Plaintiff objects to the dismissal of defendant Bonner from the action. Plaintiff argues that defendant Bonner acted with deliberate indifference in allowing “more correctional officers in Plaintiff’s cell than what was needed to confront Plaintiff. He knew the amount of officers rushing in on inmate by him letting door stay open instead of closing when one or two officers came in

1 constituted a threat and disregard [sic] by him that lead to excessive force by (6) officers.” (Id.,at
2 p.1).

3 However, in Plaintiff’s [second amended complaint](#), Plaintiff states under penalty of perjury
4 that defendant Bonner was in the control tower over 100 feet away in a booth gun tower; Plaintiff
5 also states in his verified amended complaint that defendant Bonner “was to [sic] far away in a quite
6 [sic] booth like windowed tower to hear or see all the events that took place...[the] events was out
7 of his vision especially when othe[r] C/Os blocked the cell door at the time with their bodies...”
8 (Doc. 16, Second Amended Complaint, p.5).

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
10 de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings
11 and Recommendations to be supported by the record and by proper analysis.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The [Findings and Recommendations](#), filed November 17, 2008, is adopted in full;
- 14 2. Plaintiff’s claims against Defendants Bonner and Yates are dismissed, with prejudice,
15 for failure to state a claim upon which relief may be granted under section 1983, and
16 these defendants are dismissed from this action with prejudice; and
- 17 3. This action shall proceed on Plaintiff’s second amended complaint, filed July 8,
18 2008, and addendum to Plaintiff’s second amended complaint filed July 11, 2008,
19 against Defendants Argurraide, Jenan, Ward, Defosses, Teater, Meyst, and
20 McCollum for violation of the Eighth Amendment.

21 IT IS SO ORDERED.

22 **Dated: January 9, 2009**

23 **/s/ Oliver W. Wanger**
24 **UNITED STATES DISTRICT JUDGE**
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