

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DELBERT BARNETT,

 Plaintiff,

 v.

R. FISHER, JR.,

 Defendant.

No. 1:17-cv-01361-DAD-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT, AND DENYING PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT

(Doc. Nos. 42, 43, 48)

Plaintiff Delbert Barnett is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. Plaintiff’s sole claim is against defendant Fisher for deliberate indifference to plaintiff’s safety in violation of the Eighth Amendment. (*See* Doc. No. 16.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 22, 2020, plaintiff filed a motion for summary judgment. (Doc. No. 42.) Defendant filed an opposition to that motion on July 3, 2020. (Doc. No. 45.) Plaintiff did not file a reply. On June 26, 2020, defendant filed a cross-motion for summary judgment. (Doc. No. 43.) Plaintiff filed an opposition on July 7, 2020, and defendant filed a reply thereto on July 13, 2020. (Doc. Nos. 46, 47.)

1 On December 7, 2020, the assigned magistrate judge issued findings and
2 recommendations, recommending that defendant's motion for summary judgment be granted and
3 that plaintiff's motion be denied. (Doc. No. 48.) The magistrate judge found that, viewing the
4 facts in the light most favorable to plaintiff, plaintiff had failed to show that defendant violated
5 his Eighth Amendment rights. (*Id.* at 6-9.) Specifically, the magistrate judge concluded that
6 under the undisputed evidence before the court on summary judgment plaintiff had failed to show
7 that he was at a substantial risk of harm on the date he was attacked in the prison dining hall and
8 also failed to show that defendant Warden Fisher was aware of any such risk posed to plaintiff.
9 (*Id.* at 6, 8.) The findings and recommendations were served on all parties and provided notice
10 that any objections thereto were to be filed within 21 days. (*Id.* at 9.) Neither party has filed any
11 objections to the pending findings and recommendations and the time to do so has passed.

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
13 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings
14 and recommendations to be supported by the record and proper analysis.

15 Accordingly,

- 16 1. The findings and recommendations issued on December 7, 2020 (Doc. No. 48) are
17 adopted in full;
- 18 2. Plaintiff's motion for summary judgment (Doc. No. 42) is denied;
- 19 3. Defendant's motion for summary judgment (Doc. No. 43) is granted; and,
- 20 4. The Clerk of the Court is directed to enter judgment and close this case.

21 IT IS SO ORDERED.

22 Dated: February 12, 2021

23 
24 _____
25 UNITED STATES DISTRICT JUDGE
26
27
28