

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

DOMINIC VA'SHON WRIGHT,
Plaintiff,
v.
JEFF MACOMBER, et al.,
Defendant.

No. 2: 16-cv-2054 JAM KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 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 302.

On February 5, 2018, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations. (ECF No. 28.)

The magistrate judge recommended that all claims in the third amended complaint be dismissed, but for the Eighth Amendment and retaliation claims against defendants Macomber and Roth, and the retaliation claim against defendant Masterson based on his alleged filing of a false disciplinary report. (ECF No. 26.)

///

1 Plaintiff objects to the magistrate judge's recommendation of dismissal of plaintiff's
2 conspiracy to retaliate claim. Plaintiff alleged that defendants conspired to retaliate against him
3 for filing grievances by retaining him in administrative segregation ("ad seg") for 13 months
4 based on false information. (ECF No. 25 at 4-7.) In part, plaintiff argued that defendants retained
5 him in ad seg on the allegedly false grounds that he could not be released to C facility due to
6 enemy concerns. (Id.) Plaintiff argued that defendants falsely claimed that he had enemy
7 concerns on C yard because he was attacked on C yard on March 30, 2014. (Id. at 6-7) Plaintiff
8 argued that he could have been released to C yard, rather than retained in ad seg, because he was
9 the aggressor during the March 30, 2014 C yard incident, and not the victim. (Id. at 6-7.)

10 The magistrate judge found that plaintiff's claim that defendants falsely found that he had
11 enemies on C yard was not well supported. (Id. at 7.)

12 In his objections, plaintiff alleges that he attached the wrong exhibit to the third amended
13 complaint in support of his claim that he had no enemies on C yard based on the March 30, 2014
14 incident. Attached to plaintiff's objections is a rules violation report charging plaintiff with
15 fighting with another inmate on March 30, 2014. (ECF No. 28 at 2.) The report states that
16 plaintiff and inmate Sedrakyan were seen standing a foot apart, facing each other. (Id.) Plaintiff
17 then struck inmate Sedrakyan in the face with his fist. (Id.) Inmate Sedrakyan then fell to the
18 ground. (Id.) Plaintiff then leaned down and struck inmate Sedraykan twice with a closed fist in
19 the facial area. (Id.)

20 In his objections, plaintiff argues that the March 30, 2014 incident involved a Southern
21 Mexican inmate, i.e., inmate Sedrakyan, who wanted off the yard because his people were after
22 him. (Id. at 1.) Plaintiff alleges that Sedrakyan hit plaintiff first. (Id.)

23 The rules violation report attached to plaintiff's objections does not demonstrate that
24 plaintiff had no enemies on C yard at the time he was retained in ad seg. Plaintiff does not
25 address the outcome of the rules violation report. Plaintiff does not otherwise explain how this
26 report demonstrates that he had no enemies on C yard at the time he was retained in ad seg.

27 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
28 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the

1 court finds the findings and recommendations to be supported by the record and by proper
2 analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed February 5, 2016, are adopted in full;

5 2. All claims in the third amended complaint are dismissed, but for the Eighth

6 Amendment and retaliation claims against defendants Macomber and Roth, and the retaliation
7 claim against defendant Masterson based on his alleged filing of the false disciplinary report.

8

9 DATED: June 5, 2018

10

/s/ John A. Mendez

11

UNITED STATES DISTRICT COURT JUDGE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28