

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 10-cv-00375-WYD-MJW

SHANE J. RULLI,

Plaintiff,

v.

TRANSPORT OFFICER JOHN DOE ROBINSON,

Defendant.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court in connection with Defendants' Motion to Dismiss [ECF No. 18], filed May 11, 2010. This motion was referred to United States Magistrate Judge Watanabe for a recommendation by Order of Reference dated May 11, 2011. Magistrate Judge Watanabe issued a Recommendation on Defendant's Motion to Dismiss on February 14, 2011, and that Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Watanabe recommends therein that Defendant's motion to dismiss be granted. Recommendation at 3. Magistrate Judge Watanabe advised the parties that specific written objections were due within 14 days after service of this recommendation. Recommendation at 7. Despite this advisement, no objections were filed by any party to the Magistrate Judge's Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir.

1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."¹ *See* Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Watanabe that the Plaintiff's Eighth Amendment claim, the only remaining claim, must be dismissed. The Plaintiff has not sufficiently alleged facts supporting either the objective or subjective elements of the requisite test to establish an Eighth Amendment violation. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994). As such, the Plaintiff has failed to state a claim upon which relief may be granted.

Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated February 14, 2011, is **AFFIRMED and ADOPTED**. In accordance therewith, it is

ORDERED that Defendant's Motion to Dismiss [ECF No. 18] is **GRANTED**.

Dated: March 21, 2011

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge

¹ Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review, Fed. R. Civ. P. 72(b).