

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Marcia S. Krieger**

Civil Action No. 13-cv-02442-MSK-MJW

JOE WALLACE PEEPLES, III,

Plaintiff,

v.

**DIAZ DEL CAMPO, CO;
DOLLARD, CO; and
GARCIA, Warden,**

Defendants.

**OPINION AND ORDER ADOPTING RECOMMENDATION, GRANTING
MOTION FOR SUMMARY JUDGMENT, AND DISMISSING CLAIMS**

THIS MATTER comes before the Court pursuant to the Magistrate Judge's July 28, 2014 Recommendation (# 37) that the Defendants' Motion to Dismiss (# 23) and Motion for Summary Judgment (# 22, as amended # 36) be granted. No party has filed Objections to that Recommendation.

The Recommendation summarizes the allegations in Mr. Peeples' *pro se* Complaint (# 1), and the Court adopts that recitation of the facts. In summary, Mr. Peeples is an inmate in the custody of the Federal Bureau of Prisons ("BOP"). While housed at a BOP institution in Englewood, Colorado, Mr. Peeples alleges that he was sexually assaulted by Corrections Officer Diaz Del Campo on two occasions. On both occasions, while escorting Mr. Peeples to the shower area, Officer Del Campo allegedly grabbed Mr. Peeples' buttock and placed his finger in Mr. Peeples' intergluteal cleft. Mr. Peeples alleges that Officer Del Campo and Officer Dollard threatened to rape him. Mr. Peeples states that he brought these incidents to the attention of Mr.

Garcia, the Warden of the facility (and to the BOP's Office of Inspector General, among others), but no action was taken. (Mr. Peeples alleges that there was a broad "cover-up" at work, and believes that his mailing to BOP officials and others were being regularly stolen or diverted.) Mr. Peeples was ultimately transferred to a different facility.

Mr. Peeples does not specifically identify the particular legal basis for the claims he purports to assert, and the Magistrate Judge did not see the need to do so in the course of issuing the Recommendation. Because this Court adopts the Magistrate Judge's reasoning and conclusions, this Court need not do so either.

The Defendants filed a Motion to Dismiss (# 23) the claims in the Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), and simultaneously filed a Motion for Summary Judgment (# 22, as amended # 36), arguing that Mr. Peeples failed to exhaust his available administrative remedies prior to suit, requiring dismissal of the action pursuant to the Prisoner Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). The Court referred these motions to the Magistrate Judge for a Recommendation, and the Magistrate Judge recommended (# 37) that the Motion for Summary Judgment be granted and the claims dismissed without prejudice as unexhausted. More than 14 days have passed since the issuance of that Recommendation, and no party has filed Objections.

When no party files Objections to a recommendation, the Court reviews the recommendation under whatever standard of review it deems appropriate. *Summers v. State of Utah*, 927 F.2d 1165, 1167 (10th Cir.1991). This Court has reviewed the recommendation under the otherwise applicable *de novo* standard of Fed. R. Civ. P. 72(b). In doing so, it has also considered Mr. Peeples' *pro se* status, and has accordingly construed all of Mr. Peeples' filings liberally. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

Upon *de novo* review, the Court agrees with the Magistrate Judge's thorough findings, reasoning, and conclusions. The Defendants have made a *prima facie* showing that Mr. Peeples failed to administratively exhaust his claims here, and Mr. Peeples has not come forward with evidence establishing such exhaustion or grounds upon which such exhaustion should be excused. Accordingly, the Court **ADOPTS** the Recommendation (# 37) in its entirety. The Defendants' Motion for Summary Judgment (#22, as amended # 36) is **GRANTED**. Mr. Peeples' claims are **DISMISSED** without prejudice for failure to exhaust under 42 U.S.C. § 1997e(a). The Clerk of the Court shall close this case.

Dated this 4th day of September, 2014.

BY THE COURT:



Marcia S. Krieger
Chief United States District Judge