

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MICHAEL REILLY,

Plaintiff,

vs.

Case No. 2:09-cv-363-FtM-29DNF

MARLYN HARVIN and ROBIN WEHLE,
OFFICE OF COMMUNITY CORRECTIONS,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #7), filed July 29, 2009, recommending that the Affidavit of Indigency (Doc. #4), construed as a motion to proceed *in forma pauperis*, be denied and the case dismissed. Plaintiff filed an Objection (Doc. #8) and Affidavit (Doc. #9) in response on August 3, 2009.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State

Bd. of Educ., 896 F.2d 507, 512 (11th Cir. 1990)(quoting H.R. 1609, 94th Cong. § 2 (1976)). Even in the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

After conducting an independent examination of the file and upon due consideration of the Report and Recommendation and Objection thereto, the Court accepts the Report and Recommendation of the magistrate judge and will overrule the objection. To the extent that plaintiff is attempting to bring a criminal complaint, as stated in the Objection, only the Department of Justice, by and through the United States Attorney's Office, is authorized to initiate criminal actions. Therefore, the "Response to Court Order Requiring Plaintiff to File Amended Complaint in the Affidavit for Injunction Hearing" (Doc. #6), construed as an Amended Complaint, is due to be dismissed.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation (Doc. #7) is hereby **adopted** and the findings incorporated herein.

2. Plaintiff's Affidavit of Indigency (Doc. #4), construed as a motion to proceed *in forma pauperis*, is **DENIED**.

3. The Clerk shall enter judgment dismissing the case without prejudice, terminate all pending motions and deadlines, and close the case.

DONE AND ORDERED at Fort Myers, Florida, this 17th day of August, 2009.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Douglas N. Frazier
United States Magistrate Judge

Unrepresented parties