

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

DUBLIN DIVISION

LESTER J. SMITH, JR.,

Plaintiff,

v.

DONALD BARROW,

Defendant.

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CV 311-044

ORDER


After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation ("R&R"), to which objections have been filed (doc. no. 149). The Magistrate Judge recommended that Plaintiff's motion for summary judgment be denied. (Doc. no. 147.) Specifically, the Magistrate Judge found that there remained genuine disputes of material fact concerning whether Defendant, the Warden at Telfair State Prison ("TSP") during the relevant time period, personally participated in the denial of meals in accordance with Plaintiff's religious preferences, and whether and when Defendant was informed that the denial was occurring. (*Id.* at 6-11.) The Magistrate Judge also found that Defendant simply being informed of the alleged misconduct of his subordinates through an informal conversation with Plaintiff or a grievance was insufficient as a matter of law to establish his liability for such misconduct. (*Id.* at 10.)

Plaintiff's objections are, in the main, a reiteration of the contentions he made in his motion for summary judgment and his reply to Defendant's response, and they have thus already been sufficiently addressed by the Magistrate Judge in the R&R. One point warrants

further comment, however. Plaintiff contends that the Magistrate Judge “misconstrued” the duration of the denial of meals to Plaintiff in accordance with his religious preferences while he was at TSP, as he asserts that he was denied such meals for the “entire duration” of his confinement at TSP from April of 2010 to May of 2010. (Doc. no. 149, p. 1.) The Magistrate Judge did not find otherwise, however; he noted that Plaintiff claimed that he was denied “restricted vegan” meals while he was incarcerated at TSP, “particularly” – but not exclusively – “for a period of eleven consecutive days while he was in segregated confinement.” (Doc. no. 147, p. 2.) Thus, Plaintiff’s allegation that the Magistrate Judge “misconstrued” the period of time that Plaintiff alleged a constitutional violation was occurring lacks merit. In any event, the Court agrees with the Magistrate Judge that whether Plaintiff is alleging that he was denied vegan meals for the approximately one month he was at TSP in 2010 or only for the eleven days he was in segregated confinement, he has fallen well short of establishing Defendant’s liability for the alleged denial at this juncture.

Accordingly, Plaintiff’s objections are **OVERRULED**, and the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Plaintiff’s motion for summary judgment is **DENIED**.¹ (Doc. no. 58.)

SO ORDERED this 4th day of March, 2013, at Augusta, Georgia.


HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹As noted by the Magistrate Judge, according to the Scheduling Notice issued on December 21, 2012, discovery remains ongoing in this case. Both parties are thus still free to file motions for summary judgment by the deadline stated therein. (Doc. no. 141.)