

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**DARRYL MORGAN,
Plaintiff**

CIVIL ACTION

VERSUS

NO. 15-3693

**MARLIN N. GUSMAN, ET AL.
Defendants**

SECTION: "E"

ORDER AND REASONS

On August 19, 2015, Plaintiff Darryl Morgan filed a complaint pro se and in forma pauperis pursuant to 42 U.S.C. § 1983 against Orleans Parish Criminal Sheriff Marlin N. Gusman and a number of his deputies.¹ In sum, Morgan alleged he was subject to a number of unconstitutional conditions of confinement and was denied adequate medical treatment while incarcerated in Orleans Parish Prison.² After conducting a *Spears* hearing and considering Morgan's complaints, Chief Magistrate Judge Joseph Wilkinson issued a Report and Recommendation on January 15, 2016, recommending that Morgan's complaint be dismissed with prejudice as legally frivolous and/or for failure to state a claim under 28 U.S.C. § 1915(e)(2) and 42 U.S.C. § 1997e(c)(1).³

Objections to the Report and Recommendation were due by January 29, 2016. Morgan did not file objections to the Report within that time frame. Accordingly, the undersigned adopted Judge Wilkinson's Report and Recommendation, in full, on February 2, 2016,⁴ and entered a Judgment dismissing Morgan's complaint with prejudice on the same date.⁵ On April 15, 2016, more than two months after the deadline

¹ R. Doc. 1.

² See R. Doc. 1.

³ R. Doc. 15.

⁴ R. Doc. 16.

⁵ R. Doc. 17.

for filing objections, Morgan filed into the record a request to reopen his case, asserting for the first time objections to Judge Wilkinson's Report and Recommendation.⁶

Whether to consider late-filed objections to a Report and Recommendation is entirely within the Court's discretion.⁷ The Court finds no reason to exercise its discretion and consider Morgan's late-filed objections in this case. Morgan had an opportunity to file objections prior to January 29, 2016, but failed to do so, instead waiting over two months to raise issues with the Report and Recommendation. Furthermore, even if the Court were to consider Morgan's filing, it would be an exercise in futility, as his objections to the Report and Recommendation are not meritorious. From what the Court can tell, Morgan argues the Report and Recommendation, and this Court's Order adopting the Report, were incorrectly based only on his claim that he was unconstitutionally deprived medical treatment, not on his claim that the conditions of confinement in Orleans Parish Prison were unconstitutional.⁸ The Court must disagree with this argument, as the Report and Recommendation goes to great lengths to address both of Morgan's claims, *i.e.*, first, Morgan's claim that he was subjected to unconstitutional conditions of confinement, and second, Morgan's claim that the medical treatment he received was unconstitutional.⁹ Likewise, in adopting the Report and Recommendation, this Court was cognizant of the universe of Morgan's claims and agreed with the Magistrate Judge with respect to both.

Accordingly;

⁶ R. Doc. 22.

⁷ In *Scott v. Alford*, 62 F.3d 395 (5th Cir. 1995), the Fifth Circuit noted that "district courts need not consider late objections" to a Report and Recommendation. Instead, whether to consider late-filed objections is within the district court's discretion. *Id.* See also *Loredo v. Barnhart*, 210 F. App'x 417, 418 n.1 (5th Cir. 2006) (quoting *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988) (finding it within the district court's discretion whether to consider late-filed objections)). Courts outside of the Fifth Circuit have also weighed in on this issue. See, e.g., *Jones v. Williams*, No. 92-1157, 1993 WL 477916, at *1 (W.D. Okla. May 28, 1993) ("It is entirely within this Court's discretion whether to allow the untimely objection, and in most every case the Court will not allow late objections.").

⁸ R. Doc. 22.

⁹ See R. Doc. 15.

IT IS ORDERED that Morgan's request to reopen his case is **DENIED**.

New Orleans, Louisiana, this 19th day of April, 2016.

A handwritten signature in cursive script that reads "Susie Morgan". The signature is written over a horizontal dashed line.

**SUSIE MORGAN
UNITED STATES DISTRICT JUDGE**