

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

JULIO OTERO

CIVIL ACTION

VERSUS

JIMMY SMITH, ET AL.

NO.: 16-00044-BAJ-RLB

RULING AND ORDER

Before the Court is **Defendants' Motion for Summary Judgment (Doc. 16)** filed by Jimmy Smith, Sam Adams, Joseph Barr, Marcus Callahan, and Edward Honeycutt (collectively "Defendants"), in which Defendants seek to dismiss Julio Otero's ("Plaintiff") claims against them pursuant to Federal Rule of Civil Procedure ("Rule") 56. Plaintiff did not file an opposition in response to Defendants' motion.

The United States Magistrate Judge issued a Report and Recommendation (Doc. 17), recommending that the Court grant Defendants' motion for summary "and that the plaintiff's Eighth Amendment claim for failure to protect asserted against these defendants be dismissed for failure to exhaust administrative remedies." (*Id.*). The Magistrate Judge also recommended that the Court dismiss Plaintiff's claims regarding his disciplinary proceedings and the handling of his grievance as frivolous and for failure to state a claim upon which relief may be granted, and that the Court decline to exercise supplemental jurisdiction over any remaining state law claims. (*Id.*).

In addition, the Magistrate Judge recommended that the Court dismiss Plaintiff's claims against Anthony Whitiker, Nathaniel Murray and Calvin Walker,

additional defendants named in this action, for Plaintiff's failure to ensure proper service of process pursuant to Federal Rule of Civil Procedure ("Rule") 4(m). (Doc. 17 at pp. 2 n. 1, 10; *see also* Docs. 11, 12).<sup>1</sup>

The Report and Recommendation specifically notified Plaintiff that, pursuant to 28 U.S.C. § 636(b)(1), he had fourteen (14) days from the date he received the Report and Recommendation to file written objections to the proposed findings of fact, conclusions of law, and recommendations therein. (Doc. 17 at p. 1). Plaintiff did not file objections to the Magistrate Judge's Report and Recommendation.

Having carefully considered the underlying Complaint, the instant motion, and related filings, the Court **APPROVES** the Magistrate Judge's Report and Recommendation, and hereby **ADOPTS** same as its own findings of fact, conclusions of law, and recommendations contained therein.

Accordingly,

**IT IS ORDERED** that the Magistrate Judge's **Report and Recommendation (Doc. 17)** is **ADOPTED** as the Court's opinion herein.

**IT IS FURTHER ORDERED** that Defendants' **Motion for Summary Judgment (Doc. 16)** is **GRANTED**.

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<sup>1</sup> Although Plaintiff's Complaint (Doc. 1) names Anthony Whitiker, Nathaniel Murray, and Calvin Walker as defendants, the record demonstrates that these defendants have not yet been served. (Doc. 11). Plaintiff was informed of the lack of service by the Clerk of Court but failed to correct this procedural defect. Therefore, the Magistrate Judge recommends that Anthony Whitiker, Nathaniel Murray and Calvin Walker be dismissed without prejudice "for failure of the plaintiff to effect timely service upon them." (Doc. 17 at p. 2, n. 1).

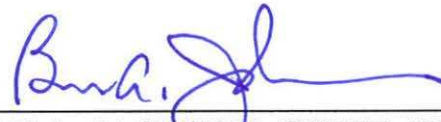
**IT IS FURTHER ORDERED** that Plaintiff's claims against Anthony Whitiker, Nathaniel Murray, and Calvin Walker are **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to timely effect service upon them.

**IT IS FURTHER ORDERED** that Plaintiff's Eighth Amendment claims against Jimmy Smith, Sam Adams, Joseph Barr, Marcus Callahan, and Edward Honeycutt are **DISMISSED WITH PREJUDICE** for failure to exhaust administrative remedies.

**IT IS FURTHER ORDERED** that Plaintiff's remaining claims against Jimmy Smith, Sam Adams, Joseph Barr, Marcus Callahan, and Edward Honeycutt regarding disciplinary proceedings and the handling of his grievance are **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted.

**IT IS FURTHER ORDERED** that the Court declines to exercise supplemental jurisdiction in connection with any potential remaining state law claims asserted against Jimmy Smith, Sam Adams, Joseph Barr, Marcus Callahan, and Edward Honeycutt.

Baton Rouge, Louisiana, this 31<sup>st</sup> day of January, 2017.



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**BRIAN A. JACKSON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**