

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RONALD GRAVES

CIVIL ACTION

VERSUS

BURL CAIN, ET AL.

NO. 16-00292-BAJ-RLB

RULING AND ORDER

Before the Court is the **Motion for Summary Judgment (Doc. 79)**, filed by Defendants Wilford Cazlot and Ray Vittorio. The Motion is opposed. (Doc. 81). The Magistrate Judge has issued a **Report And Recommendation (Doc. 85)** (“R&R”) recommending that the Court grant Defendants’ Motion for Summary Judgment on the basis of qualified immunity and dismiss Plaintiff’s claims against Defendants with prejudice. (Doc. 85, p. 10). This recommendation is opposed. (Doc. 86). The Magistrate Judge also recommended that the Court dismiss Plaintiff’s claims against nonmovant Derek Jones for failure to exhaust his administrative remedies and to decline the exercise of supplemental jurisdiction against any and all remaining Defendants, including inmate Ricky Gary. This recommendation is unopposed.

Plaintiff has two interrelated objections to the R&R. First, Plaintiff argues that Defendants previously raised qualified immunity as a defense and were denied. *See Graves v. Cain*, 2019 WL 5092939 (M.D. La. Oct. 11, 2019); (Doc. 55). Second, Plaintiff argues that the Magistrate Judge, in granting summary judgment for the Defendants, improperly credited Defendants’ evidence over Plaintiffs.

While the Court did address Defendants' qualified immunity defense, it was in the context of a Motion to Dismiss. *See* (Doc. 43). The Court adopted, in relevant part, the Magistrate Judge's recommendation denying Defendants' Motion because Plaintiff had "alleged facts tending to show that Defendants . . . were aware of a substantial risk of harm to the plaintiff and disregarded the risk." (Doc. 51, p. 9). Defendants have re-urged their qualified immunity defense on summary judgment and argue that Plaintiff has failed to establish or point to specific facts in the record that support the allegations in Plaintiff's pleading. (Doc. 79-1, p. 9). Because Plaintiff's opposition merely relies on his unverified complaint rather than citing to admissible evidence that disputes Defendants' claims, the Magistrate Judge recommended granting Defendants qualified immunity. (Doc. 85, p. 8). Therefore, the Magistrate Judge has not improperly made a credibility determination. Rather, Plaintiff has failed to cite to any specific facts or evidence in the record that would allow a reasonable trier of fact to find in his favor. *See* (Doc. 81); FED. R. CIV. P. 56(c)(1).

Having carefully considered the underlying Complaint, the instant Motions, and related filings, the Court **APPROVES** the Magistrate Judge's Report and Recommendation, and **ADOPTS** it as the Court's opinion herein.

Accordingly,

IT IS ORDERED that Defendant' Motion for Summary Judgment is **GRANTED**. Plaintiff's claims against Defendants Cazelot and Vittorio are **DISMISSED**, with prejudice.

IT IS FURTHER ORDERED that summary judgment is **GRANTED** in favor of Defendant Jones.

IT IS FURTHER ORDERED that the Court declines the exercise of supplemental jurisdiction against Defendants.

A separate judgment shall issue.

Baton Rouge, Louisiana, this 19th day of April, 2021



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