

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

COREY ASKEW,

Plaintiff,

Case No. 08-13567

Honorable Denise Page Hood

v.

VICKI McCABE, et al.,

Defendants.

**ORDER ACCEPTING REPORT AND RECOMMENDATION
AND GRANTING VARIOUS MOTIONS TO DISMISS**

This matter is before the Court on Magistrate Judge Michael Hluchaniuk's Report and Recommendation, dated August 2, 2010 [Doc. No. 34]. Objections were filed on August 23, 2010 (mailed by Plaintiff on August 19, 2010).

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a de novo determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made." 28 U.S.C. § 636(B)(1)(c). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate." *Id.*

In order to preserve the right to appeal the Magistrate Judge's recommendation, Petitioner must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947

(6th Cir. 1981).

Plaintiff filed the instant action on August 19, 2008 and the Court allowed Plaintiff to proceed *in forma pauperis*. Various Defendants filed Motions to Revoke Plaintiff's *In Forma Pauperis* Status under the three strikes provision set forth in 28 U.S.C. § 1915(g). The Magistrate Judge recommended that the motions be granted because the three strikes provision is applicable to the instant case.

The Court initially denied Plaintiff's request to proceed *in forma pauperis*, issuing an Order to Show Cause why the case should not be dismissed under the three strikes provision, identifying three applicable cases: *Askew v. Blair, et al.*, No. 1:07-cv-636 (W.D. Mich. Apr. 4, 2008); *Askew v. Bergh, et al.*, No. 2:07-cv-127 (W.D. Mich. Oct. 4, 2007); and *Askew v. Berrien County Jail, et al.*, No. 1:94-cv-663 (W.D. Mich. Nov. 8, 1994). Plaintiff claimed that he was not the "Corey A. Askew" in the 94-cv-663 case. The Court thereafter granted *in forma pauperis* status. Defendants now seek to revoke Plaintiff's *in forma pauperis* status.

The Court agrees with the Magistrate Judge that Defendants have submitted sufficient evidence to show that Plaintiff was in fact the "Corey A. Askew" in the 94-cv-663 case. In his Objections to the Report and Recommendation, Plaintiff does not dispute the Magistrate Judge's findings that he is the Plaintiff in the 94-cv-663 case. Plaintiff submits one Objection that the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), violates his First Amendment Right to Access the Court. The Court finds this Objection is without merit and agrees with the Magistrate Judge that the three strikes provision of the PLRA, contrary to Plaintiff's assertions, has been held constitutional against a multitude of challenges, including the right to access the courts argument. *See Jones v. Frontera*, 2009 WL 3066659 (W.D. Mich. 2009).

Accordingly,

IT IS ORDERED that Magistrate Judge Michael Hluchaniuk's August 2, 2010 Report and Recommendation [No. 34, 8/2/2010] is ACCEPTED and ADOPTED as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Defendants' Motions to Dismiss [No. 16, 6/8/2010; No. 19, 6/10/2010; No. 21, 6/10/2010; No. 31, 7/28/2010] are GRANTED.

IT IS FURTHER ORDERED that the Order Granting *In Forma Pauperis* Status [No. 6, 6/5/2009] is REVOKED and SET ASIDE.

IT IS FURTHER ORDERED that the Application to Proceed Without Prepayment of Fees [No. 2, filed 8/19/2008] is DENIED.

IT IS FURTHER ORDERED that this instant action is DISMISSED under 28 U.S.C. § 1915(g) without prejudice. Any appeal from this Order is frivolous and not taken in good faith. 28 U.S.C. § 1915(a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962), *McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: August 31, 2010

I hereby certify that a copy of the foregoing document was served upon Corey A. Askew, Reg. No. 248480, Alger Correctional Facility, N6141 Industrial Park Dr., Munising, MI 49862 and counsel of record on August 31, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager