

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HAROLD LEE WILSON, III,

Plaintiff,

Case Number: 09-13030

v.

HONORABLE AVERN COHN

LLOYD RAPELJE, VAL CHAPLIN,
O.T. WYNN, SUSAN McCULLEY,
SCOTT FREED, JANE HAWKIN,
JOHN TURNER, and R. NELSON,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 37)
AND
GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Doc. 22)
AND
DISMISSING CASE

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff, Harold Wilson II, a Michigan prisoner proceeding pro se, has sued several officials and employees of the Michigan Department of Corrections claiming a violation of his Fourteenth Amendment right to due process regarding a prison disciplinary hearing. Plaintiff says he was denied a fair and impartial hearing primarily because a confidential informant's anonymous statement was used against him without a finding by the hearing officer that the statement was credible. After the hearing, Plaintiff was found guilty of a major misconduct. The matter was referred to a magistrate judge for pretrial proceedings.

Defendants Rapelje, Chaplin, McCauley, Freed, Hawkins, Turner and Nelson (collectively “Defendants”)¹ filed a motion for summary judgment, contending that (1) Plaintiff’s claims are barred by the defense of qualified immunity because: a) the discipline imposed did not subject Plaintiff to a longer prison sentence requiring due process protections, and b) the hearing did comply with the requirement of due process; (2) Plaintiff failed to demonstrate the personal involvement of Rapelje, Chaplin and McCauley in any alleged due process violation; and (3) Plaintiff’s official capacity claims are barred by Eleventh Amendment immunity. The magistrate judge issued a report and recommendation, recommending that Defendants’ motion be granted on the grounds that the major misconduct finding against Plaintiff does not implicate federal due process protections – rendering Defendants’ remaining arguments moot.

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed. The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985). However, the Court has reviewed the MJRR and agrees with the magistrate judge.

¹O.T. Wynn, the other named defendant, has not been served, or otherwise appeared in the case, and the time for service has passed. Accordingly, Plaintiff’s claims against him are DISMISSED. See E.D. Mich. LR 41.2.

III.

Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Defendants' motion for summary judgment is GRANTED. This case is DISMISSED.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: January 4, 2011

I hereby certify that a copy of the foregoing document was mailed to Harold Lee Wilson, II, 325150, Cooper Street Correctional Facility, 3100 Cooper Street, Jackson, MI 49201 and the attorneys of record on this date, January 4, 2011, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160