

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IVAN BLACK,

Plaintiff,

Case No. 10-11211

HON. BERNARD A. FRIEDMAN

vs.

MAGISTRATE JUDGE PAUL J. KOMIVES

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Magistrate Judge Paul J. Komives' Report and Recommendation ("R and R") dated December 16, 2010, recommending that the Court grant in part and deny in part Defendant Michigan Department of Corrections' ("MDOC") motion to dismiss for failure to state a claim and motion for summary judgment for failure to exhaust administrative remedies. No objection was filed thereto.

This Court has had an opportunity to fully review this matter and hereby adopts and incorporates Magistrate Judge Komives' procedural history and factual background into this Opinion, as contained in pages 2 through 6 in the R and R. Further, the Court has fully reviewed the parties' filings, and believes that the Magistrate Judge has reached the correct conclusions for the proper reasons.

Plaintiff's complaint makes claims pursuant to 42 U.S.C. § 1983 regarding his treatment while incarcerated. Before the Court is MDOC's Rule 12(b)(6) motion to dismiss for failure to state a claim and Rule 56(b) motion for summary judgment for failure to exhaust administrative

remedies. The Court has reviewed the pleadings and the R and R, and believes that Magistrate Judge Komives reached the right conclusions for the proper reasons.

As Magistrate Judge Komives found, MDOC is entitled to dismissal of Plaintiff's claim for monetary damages, because the Eleventh Amendment bars Plaintiff's request for monetary damages. Davis v. Michigan Dept. Of Corrections, 746 F.Supp. 662, 666 (E.D.Mich. 1990). In addition, as Magistrate Judge Komives recommends, MDOC is not entitled to summary judgment with respect to plaintiff's claim to have his major misconduct points removed. The Court agrees with this recommendation because, at this time, there remains a material dispute as to whether Plaintiff's claim has been exhausted. Finally, as Magistrate Judge Komives recommends, MDOC is entitled to summary judgment with respect to Plaintiff's request to be reclassified to a lower management level. As recommended in the R and R, the Court finds that if Plaintiff is dissatisfied with his Security Classification Screen/Review, then his recourse is through the prisoner grievance process. As there is no evidence that any such grievance was filed, MDOC is entitled to summary judgment with respect to Plaintiff's request to be reclassified to a lower management level.

Accordingly,

IT IS ORDERED that Magistrate Judge Komives' Report and Recommendation dated December 16, 2010 is hereby ACCEPTED AND ADOPTED.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss and Motion for Summary Judgment is GRANTED IN PART and DENIED in part.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Plaintiff's claim for monetary damages is GRANTED.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment on Plaintiff's claim regarding his misconduct points is DENIED.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment with respect to Plaintiff's request to be reclassified to a lower management level is GRANTED.

Dated: February 15, 2011
Detroit, Michigan

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 15, 2011, by electronic and/or ordinary mail Ivan Black #497061, Woodland Center Correctional Facility 9036 E M-36, Whitmore Lake, MI 48189

s/Felicia Moses for Carol Mullins
Case Manager