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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

ALPHONSO BOUTIRE, Plaintiff,

,		

Case No. 12-cv-14611 Honorable Patrick J. Duggan

LAKREESE R. JOHNSON and GERALD MITCHELL,
Defendants.

OPINION AND ORDER GRANTING DEFENDANT MITCHELL'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT JOHNSON'S MOTION TO DISMISS

Plaintiff initiated this lawsuit against Defendants on October 18, 2012, alleging violations of his Eighth Amendment rights while he was a Michigan Department of Corrections' inmate. On January 4, 2013, Defendant Mitchell filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. On May 2, 2013, Defendant Johnson filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). This Court has referred the matter to Magistrate Judge Charles Binder for all pretrial proceedings, including a report and recommendation ("R&R") on all dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 16.) On June 27, 2013, Magistrate Judge Binder issued his R&R recommending that this Court grant Defendants' motions. (ECF No. 31.) In his R&R, Magistrate Judge Binder applies the standard for review under

Rule 12(b)(6) and concludes that Plaintiff fails to state a viable Eighth Amendment claim. (*Id.* at 6-8.) At the conclusion of his R&R, Magistrate Judge Binder advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at 9.) He further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.* at 9.) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Binder. The Court therefore adopts the R&R.

Accordingly,

IT IS ORDERED that Defendant Gerald Mitchell's motion for summary judgment (ECF No. 15) is **GRANTED**;

IT IS FURTHER ORDERED, that Defendant Lakreese R. Johnson's motion to dismiss (ECF No. 29) is **GRANTED**.

Dated: August 12, 2013 <u>s/PATRICK J. DUGGAN</u>

UNITED STATES DISTRICT JUDGE

Copies to:

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Magistrate Judge Charles Binder