

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUSSELL HANKINS #160532,

Plaintiff,

Case No. 16-cv-13845
Hon. Matthew F. Leitman

v.

JOHN WOODARD, and
MARK TENNISWOOD,

Defendants.

**ORDER (1) OVERRULING OBJECTIONS TO REPORT AND
RECOMMENDATION (ECF #25); (2) GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT (ECF #19); AND (3) DENYING
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (ECF # 24)**

In this action Plaintiff Russell Hankins, an inmate in the Michigan Department of Corrections, complains that Defendants John Woodard and Mark Tenniswood, two MDOC employees, wrongfully sanctioned him for a misconduct ticket and caused him to lose pay from his inmate employment. Hankins asserts claims under the First, Eighth, and Fourteenth Amendments.

The Defendants moved for summary judgment both for lack of exhaustion of remedies and on the ground that they are entitled to qualified immunity. (*See* ECF #19.) The assigned Magistrate Judge issued a Report and Recommendation in which she suggested that the Court grant the motion (the "R & R"). The Magistrate Judge also recommended that the Court deny Hankins' motion for preliminary injunction.

Hankins has filed objections to the R & R. (*See* ECF #26.) For the reasons explained below, the Court **OVERRULES** the objections.

Hankins' first objection relates to the Defendants' failure to exhaust administrative remedies defense. This objection is misplaced because the Magistrate Judge did not recommend that the Court grant relief based upon that defense.

Hankins' second objection makes several references to the Double Jeopardy Clause. But Hankins' Complaint does not assert a claim for violation of his rights under that Clause. Nor has Hankins shown that the Clause has any applicability here.

Hankins' third objection is directed toward the denial of his motion for preliminary injunction. But because Hankins' claims fail as a matter of law, he is not entitled to injunctive relief.

Finally, Hankins ends his objections with a request to amend his Complaint. He says he wants make clear "that Defendants intentional infliction of emotional [sic] in harassment/retaliation for the protected conduct..." (Objection, ECF #26 at Pg. ID 162.) The Court will not allow the proposed amendment. The proposed amendment does not cure the deficiency identified by the Magistrate Judge – namely, that Hankins has failed to identify any conduct that would qualify as "protected conduct" for purposes of his First Amendment retaliation claim. Nor has

Hankins showed his new proposed allegation would establish the viability of any current or potential claim.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Hankins' objections to the R & R are **OVERRULED**.
2. Defendants' Motion for Summary Judgment is **GRANTED**.
3. Plaintiffs' Motion for Preliminary Injunction is **DENIED**.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: September 25, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 25, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764