

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PARNELL SEATON,

Plaintiff,

v

B. BRINKMAN et al.,

Defendants.

Case No. 1:08-cv-524

HON. JANET T. NEFF

OPINION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On August 26, 2008, the Magistrate Judge filed a Report and Recommendation, recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915A(b) on grounds that the complaint failed to state a claim. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Judgment. *See* FED. R. CIV. P. 58.

Plaintiff objects to the Magistrate Judge's observation that he "failed to properly seek leave to appeal to the Michigan Supreme Court." Report and Recommendation at 7. Plaintiff contends that he timely sought leave to appeal. However, the Magistrate Judge's statement was not inaccurate. The register of actions from the case Plaintiff attempted to initiate in the Michigan Supreme Court indicates that his pleadings were returned to him because he failed to pay the

applicable filing fee.

Plaintiff also objects to the Magistrate Judge's recommendation to dismiss the complaint for failure to state a claim. Plaintiff apparently objects to the Magistrate Judge's application of case law to the facts of his case. Plaintiff's objection lacks merit. The Magistrate Judge properly found that Plaintiff's misconduct conviction has not been overturned by the state courts or pursuant to a habeas corpus petition. Consequently, the Magistrate Judge properly concluded that Plaintiff's § 1983 claims for declaratory relief and monetary damages arising from the disciplinary proceeding are not cognizable.

Last, Plaintiff objects to the Magistrate Judge's recommendation that this Court should find no good faith basis for appealing this matter. Because this Court agrees with the Magistrate Judge's conclusion that Plaintiff's complaint fails to state a claim, this Court also agrees with the Magistrate Judge's recommendation and certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal from this Opinion and Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

A Judgment will be entered consistent with this Opinion.

Date: November 20, 2008

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

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JUDGMENT

In accordance with the Opinion entered this date:

IT IS HEREBY ORDERED that the objections (Dkt 14) are DENIED and the Report and Recommendation (Dkt 12) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b)(1) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Plaintiff's Motion to Amend the 42 U.S.C. § 1983 Prisoner Civil Rights Complaint (Dkt 15) is DENIED as moot.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of the Judgment would not be taken in good faith.

Date: November 20, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge