

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD LEE SWACKHAMMER,

Plaintiff,

CASE NO. 1:10-CV-1160

v.

HON. ROBERT J. JONKER

MICHIGAN DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

_____ /

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman’s Report and Recommendation in this matter (docket # 62) and Plaintiff Swackhammer’s Objections to the Report and Recommendation (docket # 63). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends summary judgment on the claims of First Amendment retaliation Plaintiff asserts against Defendants Bush and Plichta. (Report and Recommendation, docket # 62.) In reaching his conclusion, the Magistrate Judge found an absence of evidence connecting Defendant Bush with the alleged retaliatory conduct. (*Id.* at 9.) The Magistrate Judge also found that the conduct of Defendant Plichta that Plaintiff describes as retaliatory is not the type of conduct that would deter a person of ordinary firmness from exercising his or her rights under the First Amendment, and therefore not an adverse action. (*Id.* at 11.) Finally, the Magistrate Judge noted that even assuming Defendant Plichta's conduct did amount to an adverse action, Plaintiff failed to establish a causal connection between the adverse action and Plaintiff's exercise of protected conduct. (*Id.*)

Plaintiff devotes most of his Objections to reiterating and expanding factual allegations he has made repeatedly in this case. Plaintiff also objects broadly to the Magistrate Judge's legal conclusions. The Magistrate Judge has already carefully and appropriately considered the factual allegations central to Plaintiff's First Amendment retaliation claim against Defendants Bush and Plichta. The evidentiary record supports the factual account the Report and Recommendation provides. Plaintiff's expanded description of the factual background does not change the fundamental legal analysis in this case. The Court agrees with the Magistrate Judge that Defendants

Bush and Plichta are entitled to summary judgment, for the very reasons articulated in the Report and Recommendation.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 62) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED:

1. The Motion for Summary Judgment (docket # 49) filed by defendants Bush and Plichta is **GRANTED**.

DATED: _____

ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE