

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN JUNIOR GORDON,

Plaintiff,

v.

UNKNOWN HARRY, et al.,

Defendants.

Case No. 1:19-cv-491

HON. JANET T. NEFF

OPINION AND ORDER

Pending before the Court in this closed prisoner civil rights action are Plaintiff's March 11, 2020 objections to a Report and Recommendation previously approved and adopted by this Court. Defendants filed a response to the objections. For the following reasons, the objections are properly denied.

Plaintiff filed this action pursuant to 42 U.S.C. § 1983. After Plaintiff's complaint was screened, the only remaining claim was his Eighth Amendment failure-to-protect claim. Defendants moved for summary judgment, arguing that Plaintiff had failed to exhaust his administrative remedies as to the claim. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) on January 14, 2020, recommending the Court instead dismiss the claim with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim based on the doctrine of claim preclusion. Specifically, the Magistrate Judge determined that Plaintiff previously litigated the same failure-to-protect claim in this Court. *See John Junior Gordon v. Heidi Washington, et al.*, No. 1:18-cv-158-RJJ-PJG.

Plaintiff requested an extension of time to file objections to the Report and Recommendation, which this Court granted (ECF No. 28). This Court's Order extended the time for objections, if any, to "not later than February 28, 2020" (*id.*). On March 10, 2020, with no timely objections having been filed, the Court adopted the Magistrate Judge's Report and Recommendation (Order, ECF No. 29) and issued a Judgment (ECF No. 30), closing this case.

On March 11, 2020, Plaintiff's objections were docketed (ECF No. 31). The objections contain Plaintiff's signature, ostensibly on February 25, 2020, and the objections were received in an envelope with a February 26, 2020 postmark (*id.* at PageID.171-172). Defendants filed a response to the objections, arguing that this Court should deny the objections as untimely (ECF No. 33 at PageID.219). The Court instead determines that even assuming *arguendo* that Plaintiff's objections were timely filed, they lack merit and do not require a different outcome in this case.

Plaintiff makes three brief, overlapping objections to the Report and Recommendation. Plaintiff asserts that "he was not granted a fair opportunity to litigate his first failure to protect claim ..." and "the court that first heard the case entered a judgment that was wrong and erroneous ..." (Obj., ECF No. 31 at PageID.170). Plaintiff argues that the Magistrate Judge's application of the doctrine of claim preclusion is improper because "this doctrine can and often will be applied in circumstances where it later becomes clear that the original decision might have been wrong" (*id.* at PageID.171). Plaintiff asserts that "if *res judicata* was applied to preclude a claim by a party that had not yet had a fair opportunity to be heard in court, it is possible that *res judicata* would run afoul of due process and the claim would have to be heard ..." (*id.*).

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 are made. Plaintiff provides no cognizable basis upon which to conclude that the

Magistrate Judge erred in applying the doctrine of res judicata in this case. Contrary to Plaintiff's assertion, and as set forth by the Magistrate Judge (R&R, ECF No. 26 at PageID.162), all of the requirements for claim preclusion are present in this case. Therefore, Plaintiff's objections are properly denied. Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 31) are DENIED.

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

This case remains closed.

Dated: October 26, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge