UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DWIGHT ERVIN ANDREWS,

Plaintiff,

v.

Case No. 2:07-cv-232
HON. ROBERT HOLMES BELL

DENVER MCBURNEY et al.,

Defendants.
_____/

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on May 22, 2008. The Report and Recommendation was duly served on the parties. The Court received objections from the Plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

In his objections, Plaintiff claims that the Magistrate Judge erred in recommending dismissal of his access to courts claim and reasserts that allegations set forth in his complaint. However, as noted by the Magistrate Judge in the report and recommendation, Plaintiff's habeas corpus petition was dismissed without prejudice for failure to exhaust state court remedies. Therefore, Defendants' alleged misconduct did not result in an actual injury to Plaintiff.

Plaintiff also asserts that the Magistrate Judge erred in recommending dismissal of his retaliation claims because the Magistrate Judge failed to consider that Plaintiff was retaliated against for assisting other prisoners with their legal claims. However, there is no First Amendment

right to provide legal assistance to another inmate. *Shaw v. Murphy*, 532 U.S. 223, 228 (2001). Generally, legal assistance agreements are only protected when the inmate receiving the assistance would otherwise be unable to pursue redress and thus are derivative of the inmate's right of access to the courts. *Herron v. Harrison*, 203 F.3d 410, 415-16 (6th Cir. 2000). Therefore, this objection lacks merit.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court and plaintiff's action will be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A(b); 42 U.S.C. § 1997e(c). This is a dismissal described by 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that an appeal of this action would not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should plaintiff appeal this decision, the Court will assess the $255 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the $455 appellate filing fee in one lump sum. Accordingly, should plaintiff seek to appeal this matter to the Sixth Circuit, the appeal would be frivolous and not taken in good faith.

Dated: September 8, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE