

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

MICHAEL BUTLER #163893,

Plaintiff,

Case No. 2:08-cv-81

v.

Honorable R. Allan Edgar

MARQUETTE BRANCH PRISON, et al.,

Defendants.

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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 27, 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 states that *Sandin v. Conner*, 515 U.S. 472, 486 (1995), does not apply because he was accused of "possession," which is an actual criminal charge. However, as noted by the Magistrate Judge in the report and recommendation, Plaintiff complains that he was placed in Level V and that he lost his job assignment. Because Plaintiff does not have a liberty interest in either a job or his security classification, his claim does not implicate the Due Process Clause.

Plaintiff also asserts that his claim should not be dismissed because his ability to receive parole may be affected. However, as noted in the report and recommendation, Plaintiff has

no liberty interest in being released on parole. Therefore, Plaintiff fails to state a claim for a violation of his procedural due process rights.

Plaintiff claims that the Magistrate Judge erred in stating that his equal protection claim was based merely on race. Rather, Plaintiff claims that he was discriminated against because of he was a practicing Islam who was also an African American. However, as noted by the Magistrate Judge, Plaintiff provides no specific factual allegations to support his contention that he was discriminated against. Therefore, this claim 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: 10/16/08

/s/ R. Allan Edgar
R. Allan Edgar
United States District Judge