

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

RICKY RONNELL EWING

PLAINTIFF

v.

CAUSE NO. 1:15CV253-LG-RHW

RONALD WOODALL, ET AL.

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION,
DISMISSING DEFENDANTS ARRINGTON AND BYRD,
AND DENYING MOTION FOR RECONSIDERATION**

This cause comes before the Court on the Report and Recommendation [30] of United States Magistrate Judge Robert H. Walker entered in this cause on May 2, 2016. In this prisoner civil rights complaint filed pursuant to 42 U.S.C. § 1983, Plaintiff Ewing alleges inadequate medical care for an eye injury. Magistrate Judge Walker conducted a screening hearing, at which Ewing agreed to the dismissal of two defendants – Mukida Arrington and Melanie Byrd. Therefore, Magistrate Judge Walker recommended that these two defendants be dismissed with prejudice.

Additionally, the Magistrate Judge examined a motion Ewing had filed earlier in the case, styled a “Motion for Reconsideration of Sentence.” (ECF No. 19). Ewing asks for release from prison because of his medical condition, and proposes that if he is released and given \$5000, he will drop all of his pending lawsuits. The Magistrate Judge found the motion improper for a number of reasons: it requested habeas relief in § 1983 litigation;¹ the defendants were medical providers who had no authority to release Ewing; and the Court had no authority to reconsider or commute a sentence

¹ Ewing has a habeas corpus petition pending in this Court. *See Ewing v. Cooley, et al.*, No. 1:15cv381-HSO-JCG.

imposed by the Circuit Court of Clay County, Mississippi. Therefore, Magistrate Judge Walker recommended that the Motion for Reconsideration of Sentence be denied.

THE LEGAL STANDARD

Ewing filed an objection to the Magistrate Judge's findings and conclusions. The Court must review any objected-to portions de novo. *See Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 646 (5th Cir. 1994); *Longmire v. Guste*, 921 F.2d 620, 623 (5th Cir. 1991). Such a review means that the Court will consider the record which has been developed before the Magistrate Judge and make its own determination on the basis of that record. *United States v. Raddatz*, 447 U.S. 667, 675 (1980). The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). No factual objection is raised when a petitioner merely re-urges arguments contained in the original petition. *Edmond v. Collins*, 8 F.3d 290, 293 (5th Cir. 1993).

DISCUSSION

Ewing's objection is an affirmation of his agreement that Arrington and Byrd should be dismissed. He also states that he wishes to continue with this lawsuit to seek damages for "all of my pain and suffering, all the pain I been going through the years being incarcerated at MDOC all my medical costs, legal cost, medical condition, my sickness, my pain, what I'm seeking in my complaint I file." (Pl. Obj. 1, ECF No. 32). Ewing's objection does not raise a factual objection to the Magistrate Judge's

findings and conclusions. Under these circumstances, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

After having thoroughly reviewed the Report and Recommendation, the Court finds it neither clearly erroneous nor contrary to law. The Magistrate Judge properly concluded that Arrington and Byrd should be dismissed, and the Motion for Reconsideration of Sentence should be denied. The Report and Recommendation will be adopted as the findings and conclusions of this Court.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [30] of United States Magistrate Judge Robert H. Walker entered in this cause on May 2, 2016, should be, and the same hereby is, adopted as the findings of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff's claims against defendants Mukida Arrington and Melanie Byrd are **DISMISSED with prejudice**.

IT IS FURTHER ORDERED AND ADJUDGED that the Motion [19] for Reconsideration of Sentence is **DENIED**.

SO ORDERED AND ADJUDGED this the 9th day of June, 2016.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE