

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

RICKY RONNELL EWING

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PLAINTIFF

v.

Civil No. 1:16cv52-HSO-JCG

**MIKEL PEABODY *Corrections*
*Officer at SMCI, et al.***

DEFENDANTS

**ORDER ADOPTING MAGISTRATE JUDGE'S [22] REPORT
AND RECOMMENDATION; GRANTING DEFENDANTS' [16] MOTION
FOR SUMMARY JUDGMENT FOR FAILURE TO EXHAUST AVAILABLE
ADMINISTRATIVE REMEDIES; DENYING PLAINTIFF'S
[20] "MOTION AND EXHIBITS AND OBJECTIONS";
AND DISMISSING PLAINTIFF'S CLAIMS WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [22] of United States Magistrate Judge John C. Gargiulo, entered in this case on April 6, 2017, regarding Defendants' Motion [16] for Summary Judgment for Failure to Exhaust Available Administrative Remedies and Plaintiff's "Motion and Exhibits and Objections" [21]. Based upon his review of the record and relevant legal authority, the Magistrate Judge recommended that Defendants' Motion [16] for Summary Judgment be granted, that Plaintiff's "Motion and Exhibits and Objections" [21] be denied, and that Plaintiff's claims be dismissed without prejudice. R. & R. [22] at 8. Plaintiff has not filed any objection to the Report and Recommendation.

For the reasons that follow, the Court finds that the Report and

Recommendation [22] should be adopted in its entirety as the finding of this Court, that Defendants' Motion [16] for Summary Judgment should be granted, that Plaintiff's Motion [21] should be denied, and that Plaintiff's claims should be dismissed without prejudice.

I. BACKGROUND

Plaintiff Ricky Ronnell Ewing ("Plaintiff" or "Ewing") filed a pro se Complaint [1] in this Court on February 16, 2016, and is proceeding *in forma pauperis*. The Complaint asserts claims pursuant to 42 U.S.C. § 1983 against Defendants Mikel Peabody, Corrections Officer at South Mississippi Correctional Institution ("SMCI"); Zenia Holicomb, Lieutenant at SMCI; and Shetica Lockhart, Lieutenant at SMCI. Compl. [1] at 1-2. On January 24, 2017, Defendants filed a Motion [16] for Summary Judgment for Failure to Exhaust Available Administrative Remedies. On February 13, 2017, Plaintiff filed an Objection [20] in opposition to Defendants' Motion [16], as well as a "Motion and Exhibits and Objections" [21], arguing that the MDOC never processed his ARP.

On January 31, 2017, the Magistrate Judge conducted an omnibus hearing which functioned as a screening hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985). According to the Magistrate Judge, at this hearing "Plaintiff admitted facts confirming that he did not fully exhaust the Administrative Remedy Program ("ARP") adopted by the [Mississippi Department of Correction ("MDOC")] before filing this lawsuit." R. & R. [22] at 1.

On April 6, 2017, the Magistrate Judge entered his Report and Recommendation [22], recommending that Defendants' Motion [16] for Summary Judgment be granted, that Plaintiff's "Motion and Exhibits and Objections" [21] be denied, and that Plaintiff's claims be dismissed without prejudice. *Id.* at 8. The Report and Recommendation [22] was mailed to Plaintiff on April 6, 2017. Return [23] at 1. Any objection to the Magistrate Judge's Report and Recommendation [22] was due within fourteen (14) days of service. L.U. Civ. R. 72(a)(3). To date, Plaintiff has not filed any objection to the Magistrate Judge's Report and Recommendation [22], and the time for doing so has passed.

II. DISCUSSION

Where no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of it. 28 U.S.C. § 636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made"). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. The Court will adopt the Magistrate Judge's Report and Recommendation [22] as the opinion of this Court, will grant Defendants'

Motion [16] for Summary Judgment, and will deny Plaintiff's "Motion and Exhibits and Objections" [21]. This civil action will be dismissed without prejudice for Plaintiff's failure to exhaust available administrative remedies.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [22] of United States Magistrate Judge John C. Gargiulo, entered on April 6, 2017, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Plaintiff Ricky Ronnell Ewing's pleading styled as a "Motion and Exhibits and Objections" [21] is **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendants' Motion [16] for Summary Judgment for Failure to Exhaust Available Administrative Remedies is **GRANTED**, and Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE** for failure to exhaust available administrative remedies. A separate final judgment will be entered pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 12th day of May, 2017.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE