

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

RAYMOND GEARHART,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 14-3197-CV-S-ODS
)	
WARDEN LINDA SANDERS, et al.,)	
)	
Defendants.)	

ORDER AND OPINION ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND FINDING ALL OTHER MOTIONS ARE MOOT

On May 2, 2014 this matter was referred to the Honorable David P. Rush, United States Magistrate Judge for this District. Judge Rush was empowered to conduct all pretrial proceedings “including, if necessary, preparing a Report and Recommendation for any dispositive motions that might be filed.” On December 1, 2014 Judge Rush issued a Report recommending that Defendants’ Motion for Summary Judgment be granted and that all other motions be deemed moot.

In July 2005 – after completing a term of imprisonment – Plaintiff was civilly committed pursuant to 18 U.S.C. 4246. Later, it was determined that Plaintiff should be involuntarily medicated; this decision has been the subject of other suits before the Court and – in light of the issues Plaintiff has agreed to dismiss – is not at issue here. The Report explains that Plaintiff originally presented three claims but that Plaintiff had agreed to “narrow” his claims by dismissing all but one of his claims without prejudice, leaving for adjudication his claim that the medication he is being forced to take is causing him permanent harm. He has sued

- Linda Sanders, the Warden at the United States Medical Center for Federal Prisoners (“USMCFP”),
- Dr. Shawn Rice, his treating psychiatrist, and
- Elizabeth Weiner, his treating psychologist.

Judge Rush construed Plaintiff's claim as one asserting a violation of his Eighth Amendment right to be free from cruel and unusual punishment based on Defendants' deliberate indifference to a serious medical need – specifically, the prescription of what Plaintiff describes as an inappropriate dosage of medication. Judge Rush recommended that the Court find the Record reflects that neither Sanders nor Weiner have any involvement in the prescription of Plaintiff's medication and thus could not be held personally liable for any violations (assuming any violations exist). He also recommended that the Court conclude that the Record construed in Plaintiff's favor would not support a finding that Dr. Rice acted with deliberate indifference to Plaintiff's medical needs. Finally, Judge Rush recommended that the Court conclude sovereign immunity bars Plaintiff's claims to the extent they are asserted against Defendants in their official capacity.

The Record reflects the Report and Recommendation was sent to Plaintiff on December 1, 2014. A party has fourteen days to file objections to a Magistrate Judge's recommended resolution of a dispositive motion. 28 U.S.C. § 636(b)(1)(C); see also Local Rule 74.1(a)(2). To date, Plaintiff has not objected to the Report and Recommendation. He has also not asked for the time to be extended as permitted by Local Rule 74.1(a)(2) (and the additional time that could be granted by that rule has also passed). "The district judge to whom the case is assigned shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made" Local Rule 74.1(a)(2). By failing to object, Plaintiff presents nothing more for the Court to consider.

The Court has nonetheless examined the Record. Having done so, the Court adopts Judge Rush's Report *en toto* as the Order of the Court. Accordingly,

1. Defendants' Motion for Summary Judgment with respect to Plaintiff's Eighth Amendment claim is granted,
2. All other claims are dismissed without prejudice based on Plaintiff's request, and
3. All other motions are moot.

IT IS SO ORDERED.

DATE: January 8, 2015

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COURT