

FILED
BILLINGS DIV.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

NOV 24 PM 12 18

BILLINGS DIVISION

PATRICK E. DUFF, CLERK

BY _____

CHAD AARON GEPHART,)

CV-07-167-BLG-RFC DEPUTY CLERK

Plaintiff,)

vs.)

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

**GEORGIAN BREWSTER (Head Jailer),)
and UNKNOWN OFFICER (Police),)**

Defendants.)

On November 3, 2008 United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation with respect to the prescreening of this 42 U.S.C. § 1983 Complaint (*Doc. 1*). *Docs. 6 & 8*. On August 28, 2008 Magistrate Judge Ostby concluded that while Plaintiff's initial Complaint did not state a valid claim for relief, it was possible that his Complaint could be cured by amendment. As such, Plaintiff was provided until September 30, 2008 to file an Amended Complaint. The August 28, 2008 Order expressly notified Plaintiff that failure to file an Amended Complaint by that date would result in the dismissal of his Complaint for failure to state a claim upon which relief may be granted. *Doc. 6*.

On September 10, 2008, Magistrate Judge Ostby's August 28, 2008 Order was returned to the Court as "undeliverable." *Doc. 7*. According to the Findings and Recommendations, the August 28, 2008 Order was again sent to Plaintiff through the Sidney, Montana Office of Probation and Parole. Although the Order was not returned, Plaintiff failed to amend his

Complaint by November 3, 2008, when Magistrate Judge Ostby issued her Findings and Recommendations advising this Court to dismiss the Complaint for failure to state a claim. *Doc.*

8. A copy of the Findings and Recommendations was mailed to Plaintiff at his last known address at the Dawson County Jail and also to the Sidney, Montana Office of Probation and Parole. The copy sent to the jail was also returned to this Court as “undeliverable.” *Doc.* 9. In any event, Plaintiff has yet to file an Amended Complaint or timely object to the Findings and Recommendations.

Upon service of a magistrate judge’s findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the November 3, 2008 Findings and Recommendation. Failure to object to a magistrate judge’s findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge’s conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

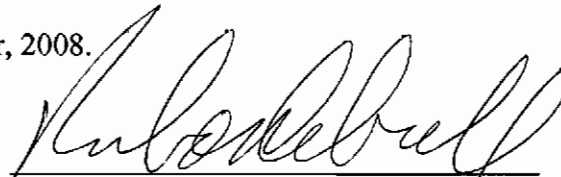
After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby’s Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** Plaintiff’s Complaint (*Doc.* 1) is **DISMISSED WITH PREJUDICE**.

The docket shall reflect that the filing of this lawsuit counts as one strike against Plaintiff, pursuant to 28 U.S.C. § 1915(g). Also, pursuant to Fed.R.App.P. 24(a)(4)(B), it is **CERTIFIED** that any appeal taken by Plaintiff from this disposition would not be taken in good faith.

The Clerk of Court shall notify the parties of the making of this Order and close this case.

DATED the 24 day of November, 2008.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE