IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

ROBERT AYRES DaSILVA, JR., Plaintiff, vs. CASCADE COUNTY DETENTION CENTER, COMMANDER O'FALLEN, BOB EDWARDS, C/Os BENNETT, LIGHT, VANZOUT, TIBBETTS, GAMON and WALTERS, and the CITY OF GREAT FALLS, Defendants.	**CV-17-00115-GF-BMM-JTJ** **ORDER ADOPTING FINDINGS AND RECOMMENDATIONS**

Plaintiff Robert DaSilva filed a motion to proceed in forma pauperis and a proposed Complaint alleging that he had been confined in unconstitutional conditions at the Cascade County Detention Center ("CCDC"). DaSilva further filed a document in which he challenges several aspects of his ongoing criminal prosecution in state court and a request for appointment of counsel. (Doc. 6.)

United States Magistrate Judge John T. Johnston entered Findings and Recommendations in this matter on November 6, 2017. (Doc. 7.) Judge Johnston granted the motion to proceed in forma pauperis and the motion to amend his

complaint. *Id.* Judge Johnston denied DaSilva's request for appointment of counsel. *Id.* Judge Johnston recommended that the City of Great Falls, Montana ("City") should be dismissed from this matter. *Id.* at 12. Judge Johnston further recommended that the Court should abstain from hearing DaSilva's claims regarding his ongoing state court criminal prosecution as set forth in his supplemental brief filed November 1, 2017. *Id.*

DaSilva timely filed an objection on November 14, 2017. (Doc. 9.) DaSilva's objections generally refer to both Judge Johnston's order denying appointment of counsel and his recommendation to dismiss the City. *Id.* at 4-5.

I. LEGAL STANDARD

The Court reviews *de novo* findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1)(C). Portions of findings and recommendations to which no party specifically objects are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The Court acknowledges DaSilva's *pro se* status. The Court must "liberally construe" *pro se* filings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Therefore, the Court construes DaSilva's objections liberally and reviews de novo the recommendation to dismiss the City. To the extent that DaSilva objects to Judge Johnston's order to deny appointment of counsel, this Court reviews those portions

for clear error. *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). This Court must defer to the magistrate's order unless it is clearly erroneous or contrary to law. *Id.*

II. DISCUSSION

Judge Johnston recommended that the City should be dismissed from this matter. (Doc. 7 at 4.) DaSilva objects to the removal of the "City of Great Falls" as a "non-entity." (Doc. 9 at 4.) DaSilva argues that the City holds him at the jail, the City has jurisdiction over the charge, the City levied taxes to build the jail, the City's taxes fund the jail, and the City pays for his incarceration. *Id.* DaSilva currently remains incarcerated at CCDC which constitutes a county entity, not a city entity. (Doc. 7 at 4.) Judge Johnston determined that no basis exists for City liability in this matter. *Id.* The Court agrees with Judge Johnston's determination that the City should be dismissed.

Judge Johnston concluded that no one, including incarcerated prisoners, has a constitutional right to be represented by appointed counsel when bringing a § 1983 claim. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1998). A judge may merely request counsel under "exceptional circumstances." 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A finding of exceptional circumstances include an evaluation of the likelihood of success on the merits and the ability of the petitioner to articulate his claims. *Terrell*, 935 F.2d at

1017. DaSilva argues that he cannot procure legal literature given his current incarceration. (Doc. 9 at 5.) Judge Johnston determined that DaSilva did not demonstrate that exceptional circumstances exist for the Court to request counsel to represent him in this matter. (Doc. 7 at 6.) The Court agrees with Judge Johnston's determination that DaSilva has not established the likelihood of success on the merits or an inability to articulate his claims pro se.

The Court has reviewed the remainder of Judge Johnston's Findings and Recommendations for clear error. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 7), are ADOPTED IN FULL.

IT IS ORDERED that the City of Great Falls, Montana is DISMISSED.

IT IS FURTHER ORDERED that the Court shall ABSTAIN from hearing DaSilva's claims regarding his ongoing state court criminal prosecution.

DATED this 29th day of November, 2017.

Brian Morris
United States District Court Judge