

**FILED**

**DEC 30 2009**

PATRICK E. DUFFY, CLERK

By \_\_\_\_\_  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

MARK COCHRAN,	)	CV 08-12-H-DWM-RKS
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
WARDEN SAM LAW,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Cochran has filed a Complaint under 42 U.S.C. § 1983 alleging that Defendants violated his Eighth Amendment rights by failing to provide him medical care for injuries he claims to have suffered when the prison van he was riding in came to an abrupt stop. Defendant Law filed a motion for summary judgment in which he argues that there is no evidence upon which a reasonable

trier of fact could conclude that the prison acted with deliberate indifference to a serious medical need.

United States Magistrate Judge Keith Strong issued Findings and Recommendations on November 10, 2009, in which he considered the merits of Law's motion despite the fact that the Plaintiff did not file a response. Judge Strong found that Plaintiff was promptly referred to medical staff each time he requested medical treatment following the incident, and that prison staff followed up on his medical treatment. In the absence of facts showing Plaintiff's Eighth Amendment rights were violated, Judge Strong recommended that Defendant Law's motion for summary judgment be granted.

Plaintiff Cochran did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Strong's Findings and Recommendations (Doc. No. 23) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the motion for summary judgment by Defendant Law (Doc. No. 19) is GRANTED.

IT IS FURTHER ORDERED:

(1) The Clerk of Court shall have the docket reflect that the dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Plaintiff's claims are frivolous in light of the undisputed medical evidence.

(2) The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

(3) The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Fed. R. App. P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 30<sup>th</sup> day of December, 2009.

  
\_\_\_\_\_  
Donald W. Molloy, District Judge  
United States District Court

