

FILED

OCT 30 2008

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JAMES LEE LARSON,) CV 08-45-H-DWM-RKS
)
Plaintiff,)
)
vs.) ORDER
)
DR. JEFF RITTOW and DR. SCHAEFFER,)
MIKE MAHONEY, JILL BUCK, TONY)
BARCLAY, SGT. JOHNSON, SGT. MCCUNE,)
BEN BOULEY, DAVE LENNING, DEPPEP)
BROWNING, KEN NEUBAUER, DIANNA)
MANN, and JAMES GAMBLE,)
)
Defendants.)
_____)

United States Magistrate Judge Keith Strong entered Findings and Recommendations in this matter on September 25, 2008.

Plaintiff 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.

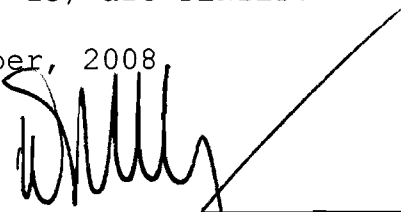
McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

This case is before the Court on Plaintiff's Amended Complaint alleging constitutional violations under 42 U.S.C. § 1983. Plaintiff has filed a motion for emergency injunction (Doc. No. 11) and a motion for preliminary injunction (Doc. No. 13), seeking a transfer from the Montana State Prison to the Montana State Hospital at Warm Springs. Judge Strong noted that Plaintiff filed an earlier lawsuit alleging a wrongful transfer from the Montana State Hospital to the Montana State Prison, which was dismissed on the basis that prisoners do not have the right to be placed at the facility of their choice. The Magistrate therefore found that the Plaintiff has not stated a valid constitutional claim for relief in this case, and on that basis recommends that the motions be denied.

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

Accordingly, IT IS HEREBY ORDERED that the Plaintiff's motion for emergency injunction (Doc. No. 11) and motion for preliminary injunction (Doc. No. 13) are DENIED.

DATED this 30th day of October, 2008.



Donald W. Molloy, District Judge
United States District Court