

FILED

SEP 26 2014

Clerk, U.S. District Court
District Of Montana
Missoula

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

DAVID LAWRENCE,

Plaintiff,

vs.

JOHN PARKER, DOUG MAHLUM,
BRUCE MCDERMOTT, FRANK
DONATO, BOB EDWARDS, and BRAD
CUSTER,

Defendants.

CV 13-060-H-DWM-RKS

ORDER

Plaintiff David Lawrence alleged that defendants conspired to fabricate evidence, bring false charges, and maliciously prosecute him in violation of his Fourteenth Amendment due process rights and his Eighth Amendment right to freedom from cruel and unusual punishment. (Complaint, Doc. 2.) On April 22, 2014, United States Magistrate Judge Keith Strong determined Lawrence failed to state a federal claim for relief and gave Lawrence until May 26, 2014, to file an amended complaint. (Doc. 7.) Lawrence moved for and was granted an extension until July 25, 2014, to file an amended complaint. (Doc 10.) Lawrence has not filed any amended complaint or further request for additional time. Judge Strong

recommends dismissal of Lawrence's Complaint and that such dismissal should count as a strike pursuant to 28 U.S.C. § 1915(g). (Doc. 11.)

Lawrence has not filed objections to Judge Strong's Findings and Recommendations. The Court reviews the findings and recommendations that are not specifically objected to 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).

The Court finds no clear error with Judge Strong's determination that Lawrence has failed to state a cognizable claim for violation of his Fourteenth Amendment due process rights and his Eighth Amendment right to freedom from cruel and unusual punishment. The Court finds no clear error with Judge Strong's determination that the dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

Accordingly, IT IS ORDERED that the Findings and Recommendation, (Doc. 11), are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Lawrence's Complaint, (Doc. 2), is DISMISSED.


IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil

Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike against Lawrence pursuant to 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure 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 26th day of September, 2014.



Donald W. Molloy, District Judge
United States District Court