

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

FILED

MAY 12 2014

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

BENJAMIN KARL SMITH,

Plaintiff,

vs.

STATE OF MONTANA; MONTANA
STATE PRISON; JOHN DOE,
DIRECTOR OF CORRECTIONS; JOHN
DOE, WARDEN; SGT. WEBBER,
PRISON GUARD; ROBERT SHAW,
UNIT MANAGER; AND JOHN DOE,
PRISON GUARD,

Defendants.

CV 13-77-H-DWM-RKS

ORDER

Plaintiff Benjamin Karl Smith, appearing pro se, brings this action under 42 U.S.C. § 1983 alleging his Federal Constitutional rights were violated when he was denied access to legal materials. Magistrate Judge Keith Strong recommends dismissing Smith Complaint for failure to state a claim. (Doc. 10.)

Smith has not filed objections to Judge Strong's Findings and Recommendation. 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 Smith’s Complaint fails to state a claim upon which relief can be granted. (*See* Doc. 9 (giving Smith a chance to amend his Complaint to cure deficiencies).)

Accordingly, IT IS ORDERED that the Findings and Recommendation (Doc. 10) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Smith’s Complaint (Doc. 2) is DISMISSED.

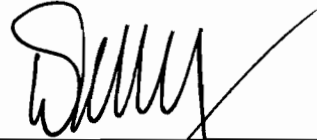
IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Smith failed to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that the Clerk of Court is directed to 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 and lacks arguable substance in law or fact.

Dated this 12th day of May, 2014.

A handwritten signature in black ink, appearing to read 'DMolloy', written over a horizontal line.

Donald W. Molloy, District Judge
United States District Court