

FILED

JAN 05 2016

Clerk, U.S. District Court
District Of Montana
MissoulaIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

ZACHARY GLEN HOVEN,

Plaintiff,

vs.

MONTANA STATE PRISON,

Defendant.

CV 15-72-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered an order, findings, and recommendations in this case on September 3, 2015, granting Plaintiff Zachary Glen Hoven's ("Hoven") motion to proceed in forma pauperis, but recommending dismissal of his Complaint for seeking monetary relief solely from a defendant who is immune from such relief. Hoven filed a motion with the Court on September 16, 2015 seeking relief from paying the filing fee in this matter, but did not otherwise object to the order or to the findings and recommendations. Thus, Hoven waived the right to de novo review of the latter. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v.*

Arn, 474 U.S. 140, 149 (1985). 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) (citations omitted).

Having reviewed the findings and recommendations, the Court finds no clear error in Judge Johnston’s conclusions regarding: (1) the Montana State Prison’s Eleventh Amendment immunity, and (2) the futility of Hoven amending his Complaint, given the nature of his allegations. Furthermore, considering Hoven signed and submitted a motion to proceed in forma pauperis, in which he acknowledged his responsibility for paying the filing fee and the terms of fee collection, the Court declines to afford Hoven relief from payment. (*See* Doc. 1 at 5.)

Accordingly, IT IS ORDERED that Judge Johnston’s findings and recommendations (Doc. 5) are ADOPTED IN FULL. Hoven’s Complaint (Doc. 2) is DISMISSED WITH PREJUDICE, and his motion for relief from paying the filing fee (Doc. 7) is DENIED.

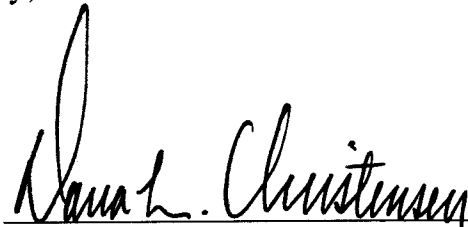
IT IS FURTHER ORDERED that the Clerk of Court shall CLOSE this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court shall have the docket

reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g), based upon Hoven's failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that the Clerk of Court shall 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 that Hoven's Complaint is frivolous, as it lacks arguable substance in law or fact.

DATED this 5th day of January, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court