

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

FILED

AUG 31 2017

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

BRIAN J. SPINKS,

Plaintiff,

vs.

ALVIN FODE, AMIE DANIELS,
DIANNE JACOBS, DAVID
PENTLAND, and MYRON BEESON,

Defendants.

CV 16-92-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations in this case on July 28, 2017, recommending dismissal of Petitioner Brian J. Spinks's ("Spinks") Complaint. Spinks timely filed objections to the Findings and Recommendations. Consequently, Spinks is entitled to a de novo review of those findings and recommendations to which he specifically objects. 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).

Judge Johnston first found that Spinks presented insufficient facts in his Complaint to establish that the sanctions issued from MSP regarding Spinks' disciplinary write-up constituted an "atypical or significant hardship" sufficient to trigger a liberty interest. The Court agrees that Spinks did not allege the deprivation of a protected liberty interest and, therefore, his due process claims regarding his disciplinary write-up and reclassification fail to state a claim. Judge Johnston allowed Spinks to file an amended complaint within 30 days to cure the defects. He states in his objections that "there has never been a shred of evidence to support the findings of guilt in this matter." (Doc. 9 at 1.) Whether this assertion has merit, Spinks did not amend his Complaint and, therefore, dismissal is appropriate.

Accordingly, IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 8) is ADOPTED IN FULL. This action is DISMISSED WITH PREJUDICE.

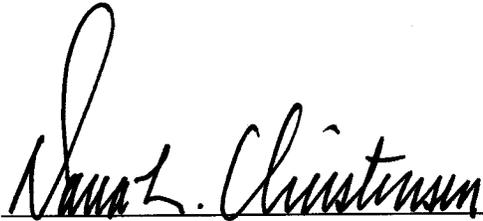
IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies under 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.

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

DATED this 31st day of August, 2017.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court