

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

FILED
SEP 11 2017
Clerk, U.S. District Court
District Of Montana
Missoula

JORDAN KEEFE,

Plaintiff,

vs.

LEROY KIRKEGARD and DAN
RIDDLE,

Defendants.

CV 17-00047-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered Findings and Recommendations in this case on August 16, 2017, recommending that Plaintiff Jordan Keefe's ("Keefe") complaint be dismissed. Keefe did not object to the Findings and Recommendations, and so has waived the right to de novo review thereof. 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 conclusion that Keefe's Complaint should be dismissed with prejudice. As discussed by Judge Johnston, Keefe's Complaint does not allege sufficient facts to state a claim for failure to protect or sufficient to name Defendant Leroy Kirkegard in his supervisory position as Warden of the Montana State Prison. Additionally, as discussed by Judge Johnston, Keefe's Complaint seeks to have his conviction set aside which is a form of relief the Court cannot grant in a civil lawsuit. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

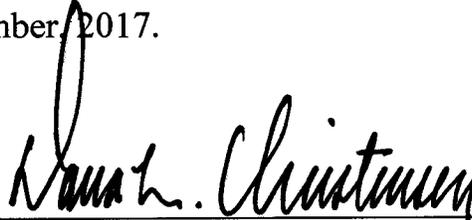
Accordingly, IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 7) is ADOPTED IN FULL. This matter is DISMISSED WITH PREJUDICE for failure to state a claim.

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 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. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

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) because Mr. Keefe failed to state a claim upon which relief may be granted.

DATED this 11th day of September, 2017.

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

Dana L. Christensen, Chief Judge
United States District Court