

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

JACOB SMITH,

Plaintiff,

vs.

DESIGNATED HEARINGS OFFICE
JOHNSON; ROXANNE WIGERT;
WARDEN JAMES SALMONSEN;
MDOC DIRECTOR BRIAN
GOOTKIN,

Defendants.

Cause no. CV 22-58-H-BMM-JTJ

**ORDER ADOPTING
MAGISTRATE JUDGE'S
FINDINGS AND
RECOMMENDATIONS**

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations in this case on July 21, 2022. (Doc. 4.) Judge Johnston recommended that Plaintiff's Complaint (Doc. 2) should be DISMISSED without further leave to amend for failure to state a claim on which relief may be granted; that the docket should reflect that Smith's filing of this action counts as one strike under 28 U.S.C. § 1915(g); and that the District Court should CERTIFY that any appeal from its disposition would not be taken in good faith.

On July 13, 2022, Plaintiff Jacob Smith moved to proceed in forma pauperis with this action under 42 U.S.C. § 1983 alleging violations of his civil rights. (Doc. 1.) The Court granted his motion (Doc. 4.) Smith filed his Complaint on July

13, 2022 alleging that Defendant Wigert “fabricated” a disciplinary report against him in retaliation for his grievances and litigation activities. (Doc. 2 at ¶¶ 2–3; *id.* at 4 ¶ 7.) Smith also alleged that the hearings officer, Defendant Johnson, denied his due process right to call witnesses and examined evidence at Smith’s parole hearing in retaliation for his litigation activities. (*Id.* at ¶¶ 5-6.) Judge Johnston found that Smith failed to allege facts supporting an inference that Wigert lacked a legitimate correctional goal in filing the report (Doc. 4 at 5.)

Judge Johnston additionally found that Smith failed to support his claim that he was denied parole in retaliation for his litigation activities (*Id.*) Smith has not filed an objection to the Findings and Recommendations. The Court has reviewed Judge Johnston’s Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). This Court finds no error in Magistrate Judge Johnston’s Findings and Recommendations and adopts them in full.

IT IS ORDERED that Judge Johnston’s Findings and Recommendations (Doc. 4) are **ADOPTED IN FULL**.

1. Smith’s Complaint (Doc. 2) is **DISMISSED** with prejudice.
2. The Clerk of Court is directed to have the docket reflect that Smith’s filing of this action counts as one strike under 28 U.S.C. § 1915(g).

3. The District Court should CERTIFY that any appeal from its disposition would not be taken in good faith.
4. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 9th day of August, 2022.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line underneath it.

Brian Morris, Chief District Judge
United States District Court