

FILED

SEP 04 2003

PATRICK E. DUFFY, CLERK
By _____
DEPUTY CLERK, MISSOULA

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

JOHN LOUVAR,)	CV 08-101-M-DWM-JCL
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
RAVALLI COUNTY SHERIFF'S OFFICE,)	
et al.,)	
)	
Defendants.)	
_____)	

Plaintiff Louvar has filed a Complaint under 42 U.S.C. § 1983 alleging that the police failed to act after his house was burglarized while he was incarcerated.

United States Magistrate Judge Jeremiah C. Lynch conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any

portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Lynch issued Findings and Recommendations in which he recommends dismissal of the Complaint with prejudice for failure to state a claim upon which relief can be granted. Judge Lynch explained that no constitutional provision requires the state to protect the life, liberty and property of citizens against private actors, unless there exists a special relationship arising from the state's restriction of an individual's freedom to act on his own behalf. The fact that the Plaintiff may have been incarcerated at the time of the break-in does not create such a special relationship, Judge Lynch concludes.

Plaintiff Louvar did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation 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). I can find no clear error with Judge Lynch's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED WITH PREJUDICE for failure to state a claim.

IT IS FURTHER ORDERED that Plaintiff Louvar's filing of this action constitutes a strike for purposes of 28 U.S.C. § 1915(g).

The Court certifies pursuant to Fed. R. App. P. 24(a)(3)(A)

that any appeal from this disposition would not be taken in good faith.

DATED this 4th day of September, 2008.



Donald W. Molloy, District Judge
United States District Court

