

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

FILED

JUL 31 2017

Clerk, U.S. Courts
District Of Montana
Missoula Division

LANNY WADE BUEHL,

Plaintiff,

vs.

POLSON POLICE DEPT., MICHELLE
LEE SCOTT, and DALE RAMESAR,

Defendants.

CV 17-61-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Order, Findings and Recommendations on June 7, 2017, recommending dismissal of Plaintiff Lanny Wade Buehl's ("Buehl") Complaint for failure to state a claim. Buehl failed to timely object to the Findings and Recommendations, and so waived its right to de novo review of the record. 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). Because the parties are familiar with the facts of this case,

they will not be repeated here.

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Lynch's conclusion that Buehl's Complaint should be dismissed. As discussed by Judge Lynch, Buehl's Complaint asserts that Defendants violated his constitutional rights when they allegedly failed to investigate a crime at his house. However, the United States Constitution does not recognize a claim under these circumstances. *Gini v. Las Vegas Metro. Police Dept.*, 40 F.3d 1041, 1045 (9th Cir. 1994) ("The police have no affirmative obligation to investigate a crime in a particular way or to protect one citizen from another even when one citizen deprives the other of liberty of property.") (citing *DeShaney v. Winnebago County*, 489 U.S. 189, 195-96 (1989)). Thus, Buehl's Complaint fails to state a claim for relief and must be dismissed.

Accordingly, there being no clear error in Judge Lynch's Findings and Recommendations, IT IS ORDERED that:

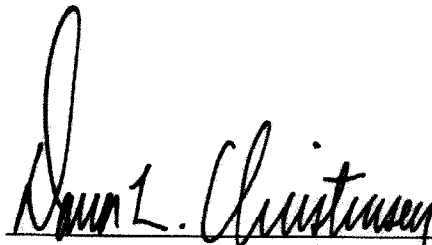
(1) Judge Lynch's Findings and Recommendations (Doc. 5) are ADOPTED IN FULL; and

(2) This matter is dismissed for failure to state a claim. 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.

(3) 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 instant Complaint lacks arguable substance in law or fact.

(4) 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 Buehl failed to state a claim upon which relief may be granted.

Dated this 31st day of July, 2017.

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

Dana L. Christensen, Chief District Judge
United States District Court