

| | |
|---|------------------------------------|
| <input checked="" type="checkbox"/> FILED | <input type="checkbox"/> RECEIVED |
| <input type="checkbox"/> ENTERED | <input type="checkbox"/> SERVED ON |
| COUNSEL/PARTIES OF RECORD | |
| FEB 25 2011 | |
| CLERK US DISTRICT COURT DISTRICT OF NEVADA | |
| BY: _____ | DEPUTY |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GILBERT JAY PALIOTTA,

3:09-cv-0194-RCJ-RAM

Plaintiff,

ORDER

v.

BROOKS, et al.,

Defendants.

Before the Court is the Report and Recommendation of U.S. Magistrate Judge Robert A. McQuaid, Jr., (#28¹) entered on February 3, 2011, recommending Defendants' motion to dismiss be granted. Plaintiff filed his Objection to the Report and Recommendation (#29) on February 14, 2011, and Defendants filed a Response to Objection (#30) on February 18, 2011.

The Court has conducted its *de novo* review in this case, has fully considered the objections of the Plaintiff, the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's Report and Recommendation (#28) entered on February 3, 2011, should be adopted and accepted.

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (#28) entered on February 3, 2011, is adopted and accepted, and Defendants' Motion to Dismiss (#23) is GRANTED as follows:

All of Plaintiff's claims asserted in Paliotta II are dismissed with prejudice as to all named Defendants as a result of claim preclusion, except that:

(1) Plaintiff's potential Eighth Amendment claim arising from the February 11 and 13, 2008 alleged incidents of assault is dismissed without prejudice because Plaintiff fails to link any named

¹Refers to court's docket number.

1 Defendant with the alleged constitutional violation;

2 (2) Plaintiff's potential First Amendment claim of access to the courts arising from the February
3 11, 2008 search of his cell is dismissed without prejudice because Plaintiff failed to link any named
4 Defendant with the alleged constitutional violations;

5 (3) Plaintiff's potential state law claims under NRS arising from the February 11 and 13, 2008
6 alleged incidents of assault are dismissed without prejudice because the court declines to exercise
7 supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

8

9 IT IS SO ORDERED.

10 DATED: This 25th day of February, 2011.

11

12

13

14

15

16

17

18

19

20

21

22

23

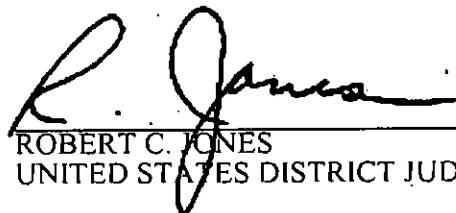
24

25

26

27

28


ROBERT C. JONES
UNITED STATES DISTRICT JUDGE