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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JACOB R. PRATT,

Plaintiff,

v.

HEALER, *et al.*,

Defendants.

Case No. 3:16-cv-00367-MMD-WGC

**REPORT & RECOMMENDATION OF
U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

In this action, Plaintiff alleges he has been classified as a sex offender by Nevada Department of Corrections (NDOC) despite never having been convicted of a sexual offense. (ECF No. 4 at 3.) He claims that NDOC refuses to remove this information from his case file, and it has been provided to the parole board. (*Id.*) He has been denied parole, with the notes indicating he is a sex offender. (*Id.* at 5.) He contends this has occurred without due process. (*Id.* at 4.) On screening, Plaintiff was allowed to proceed with his due process claim against defendants Healer, Oxborrow, Piltzer, and caseworker Jane Doe. (ECF No. 3.)

Plaintiff was subsequently transferred to New Mexico pursuant to an interstate compact. (*See* ECF No. 21.) He filed a motion for appointment of counsel, or alternatively, request for dismissal without prejudice in this and his two other pending cases, 3:15-cv-00505-MMD-WGC and 3:16-cv-00085-MMD-WGC. (*See* ECF No. 28 in this action.) The basis for his motion was that he was incarcerated in the Northeast New Mexico Detention Facility (NNMDF) and had not yet received his property, including his legal property, from Nevada, and did not then have access to research and case law from Nevada.

1 While Defendants opposed the request for appointment of counsel (ECF No. 30), they
2 did not oppose Plaintiff's request for voluntary dismissal of the action. (ECF No. 31.)

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4 The court held a consolidated hearing on these motions on March 22, 2017. (*See* Minutes
5 at ECF No. 32 in this action.) At the hearing Plaintiff maintained that he could not litigate his
6 Nevada cases because the law library in New Mexico did not maintain statutes, case law or
7 decisions from Nevada or the Ninth Circuit. The Deputy Attorney General present at the hearing
8 represented that he would send Plaintiff a copy of the relevant Nevada statutes, a copy of the
9 table of contents of the Ninth Circuit's Section 1983 outline and records relevant to his claims.
10 Under these circumstances, the court determined that Plaintiff was not entitled to the
11 appointment of counsel under the applicable standard. The court suggested that in light of this
12 ruling, and if he wished to proceed, Plaintiff should move to strike his request to dismiss his
13 action without prejudice, noting that his claims may be barred by the statute of limitations when
14 he chose to re-file. The court, under the impression at the hearing that Plaintiff wished to
15 proceed with litigating this action, denied the request for dismissal without prejudice. (*See* ECF
16 No. 32 at 5.) The court extended the discovery cut-off and dispositive motions deadline. (*Id.* at
17 5-6.)

18 Plaintiff did not move to strike his request for dismissal and no other action has been
19 taken in this case by either party since the March 22, 2017 hearing. As a result, the court rescinds
20 its prior order denying the motion for dismissal without prejudice, and in light of Defendants'
21 prior non-opposition to voluntary dismissal, recommends voluntary dismissal without prejudice
22 pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) or alternatively, Rule 41(a)(2). Plaintiff
23 is advised to take into account the applicable statute of limitations in his determination of
24 whether and when to re-file this action.¹

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26 In 3:16-cv-00085-MMD-WGC, a stipulation for dismissal without prejudice was filed following the March 22, 2017 consolidated hearing, and the stipulation was signed by District Judge Du on April 12, 2017 and the case was closed. (*See* 3:16-cv-00085-MMD-WGC, ECF Nos. 24, 25.) The court has concurrently issued a report and recommendation to grant voluntary dismissal in 3:15-cv-00505-MMD-WGC, where the Defendant similarly did not oppose Plaintiff's request to voluntarily dismiss the case.

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RECOMMENDATION

IT IS HEREBY RECOMMENDED that the District Judge enter an order **DISMISSING** this action **WITHOUT PREJUDICE**.

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

DATED: June 20, 2017.



WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE