

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
28UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DANIEL HARVEY RIGGS,
Plaintiff,
v.
WILLIAM SANDIE, *et al.*,
Defendants.

Case No. 3:16-cv-00477-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 4) (“R&R” or “Recommendation”), recommending dismissal of Plaintiff’s *pro se* complaint (ECF No. 1). Plaintiff timely filed his objection to the R&R. (ECF No. 5.)

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). In light of Plaintiff’s objection, the Court engages in a *de novo* review to determine whether to adopt Magistrate Judge Cobb’s Recommendation.

The Complaint is based on criminal and judicial proceedings against Plaintiff. (ECF No. 1.) The Magistrate Judge recommends that the Court dismiss without prejudice Plaintiff’s claims based on double jeopardy, an invalid search that led to his


1 conviction, and the invalidity of the state statutes used to convict him, as such claims
2 must be brought in a petition for writ of habeas corpus under 28 U.S.C. § 2254, after
3 exhausting state administrative remedies. (ECF No. 4.) The Magistrate Judge further
4 recommends that Plaintiff's claims against Judges Deriso, Mancuso and Flanagan be
5 dismissed with prejudice because these judges are entitled to absolute immunity. In his
6 objection, Plaintiff contends that he seeks to "vacate" the state court judgment and hold
7 the judicial officers accountable. (ECF No. 5.) The Court agrees with the Magistrate
8 Judge's recommendation that the proper vehicle for Plaintiff is through a petition for
9 habeas corpus and his claims against the judicial officers involved in his proceedings are
10 precluded because they enjoy absolute immunity from suit. The Court will therefore
11 adopt the Magistrate Judge's Recommendation in full.

12 It is therefore ordered, adjudged and decreed that the Report and
13 Recommendation of Magistrate Judge William G. Cobb (ECF No. 4) is accepted and
14 adopted in its entirety. Plaintiff's claims based on double jeopardy, an invalid search that
15 led to his conviction, and the invalidity of the state statutes used to convict him are
16 dismissed without prejudice. Plaintiff's claims against Judges Deriso, Mancuso and
17 Flanagan are dismissed with prejudice.

18 The Clerk is instructed to close this case.

19 DATED THIS 2nd day of May 2017.

20
21
22
23
24
25
26
27
28


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE