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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CORNELIUS BROWN,

Plaintiff,

v.

JULIE MARSCHNER,

Defendant.

\* \* \*

Case No. 3:17-cv-00464-MMD-VPC

ORDER ACCEPTING AND ADOPTING  
REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE  
VALERIE P. COOKE

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 3) (“R&R”) relating to plaintiff’s application to proceed *in forma pauperis* (“IFP Application”) (ECF No. 1) and *pro se* complaint (ECF No. 1-1). Plaintiff filed his objection on February 23, 2018 (“Objection”). (ECF No. 4.)

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). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard

1 of review employed by the district court when reviewing a report and recommendation to  
2 which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,  
3 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in *Reyna-Tapia* as adopting the  
4 view that district courts are not required to review “any issue that is not the subject of an  
5 objection.”). Thus, if there is no objection to a magistrate judge’s recommendation, then  
6 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.  
7 Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation to  
8 which no objection was filed).

9 The Magistrate Judge recommends granting Plaintiff’s IFP Application. Plaintiff  
10 does not object to this recommendation. Accordingly, the Court will accept the  
11 recommendation.

12 The Magistrate Judge recommends dismissing the complaint with prejudice  
13 because Plaintiff’s claims arise from his criminal trial, such as the alleged conduct of  
14 Defendant Julie Marschner, the forensic scientist who testified at his trial, and the  
15 alleged errors of the trial judge, and are therefore barred under *Heck v. Humphrey*, 512  
16 U.S. 477 (1994). Plaintiff’s objection recounts issues in his criminal trial and states that  
17 he has had other difficulties in bringing claims because of his pro se status. (ECF No.  
18 4.) However, these issues do not address the Magistrate Judge’s recommendation.  
19 Plaintiff cannot pursue his claims under 42 U.S.C. 1983 until he has successfully  
20 challenge his underlying criminal convictions.

21 It is therefore ordered, adjudged and decreed that the Report and  
22 Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 3) is accepted and  
23 adopted in its entirety.

24 It is ordered that plaintiff’s application to proceed *in forma pauperis* (ECF No. 1)  
25 without having to prepay the full filing fee is granted.

26 It is further ordered that the Clerk detach and file the complaint (ECF No. 1-1).

27 It is further ordered that the complaint (ECF No. 1-1) is dismissed without  
28 prejudice, without leave to amend.

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It is further ordered that the Clerk enter judgment and close this case.

DATED THIS 28<sup>th</sup> day of March 2018.



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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE