

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-394-BO

ROBERT DEREK LURCH, SR.,)
Plaintiff,)
)
v.)
)
FAYETTEVILLE POLICE)
DEPARTMENT and THE PANTRY, INC.,)
Defendants.)
_____)

ORDER

This cause comes before the Court on the memorandum and recommendation of United States Magistrate Judge William A. Webb following frivolity review of plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff has not objected to the memorandum and recommendation (M&R), and the matter is ripe for review. For the reasons discussed below, the Court adopts the M&R and dismisses plaintiff's complaint.

BACKGROUND

Plaintiff filed this action alleging claims for false imprisonment, racial profiling, and cruel and unusual punishment. Plaintiff seeks \$50,000 in damages.

DISCUSSION

A claim proceeding *in forma pauperis* may be dismissed at any time if it is frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). To make a frivolity determination, a court may designate a magistrate judge "to submit . . . proposed findings of fact and recommendations" for the disposition of a variety of motions. 28 U.S.C. § 636(b)(1)(B).

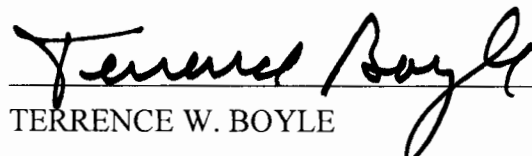
A district court is required to review de novo those portions of an M&R to which a party timely files specific objections or where there is plain error. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). “[I]n the absence of a timely filed objection, a district court need not conduct de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

The recommendation that this matter be dismissed is based upon plaintiff’s failure to allege that his arrest lacked probable cause, his failure to state a cognizable claim against the Fayetteville Police Department, and his failure to make any allegation regarding The Pantry. Because plaintiff has made no objections, the Court has reviewed the M&R for plain error and finds none. Accordingly, plaintiff’s complaint is dismissed as frivolous.

CONCLUSION

For the foregoing reasons, the Court ADOPTS the M&R [DE 7]. For the reasons discussed therein, plaintiff’s complaint is hereby DISMISSED in its entirety.

SO ORDERED, this 31 day of July, 2013.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE