

IN THE UNITED STATES DISTRICT COURT
 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CASEY RAFEAL TYLER,)	
)	
Plaintiff,)	
)	
v.)	1:15CV1011
)	
SGT. GADDY,)	
)	
Defendant.)	

ORDER

This matter is before this court for review of the Recommendation ("Recommendation") filed on December 1, 2015, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 3.) In the Recommendation, the Magistrate Judge recommends that Plaintiff's Complaint be dismissed without prejudice to Plaintiff filing a new complaint in the state courts (Doc. 2). The Recommendation was served on the parties to this action on December 1, 2015 (Doc. 4). Plaintiff timely filed objections (Doc. 5) to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations

made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions.” Id.

This court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate Judge’s Recommendation. This court therefore adopts the Recommendation with the following additional analysis.

The Magistrate Judge dismissed Plaintiff’s claim without prejudice, finding that Plaintiff’s claim for conversion was properly brought in state court, and that “[n]o other potential claim [was] apparent in the Complaint.” (See Recommendation (Doc. 3) at 1.) Plaintiff objected, arguing that his Complaint stated a claim for religious “harassment” in violation of his First Amendment rights, a claim that the Magistrate Judge did not address. (See Pl.’s Objs. (Doc. 5) at 1.) This court writes only to note that this claim will be dismissed as well.

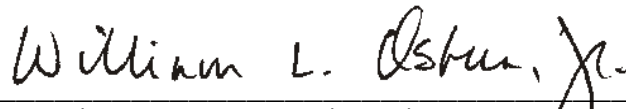
Plaintiff alleges that he suffered religious harassment when his “Rasta Crown,” which is a type of religious headgear related to the Rastafarian religion, was taken from him in violation of his First Amendment rights. (See Complaint (Doc. 2) at 4.)¹ However, Plaintiff alleges in the same paragraph that he

¹All citations in this Order to documents filed with the court refer to the page numbers located at the bottom right-hand corner of the documents as they appear on CM/ECF.

informed Defendant that he did not practice the Rastafarian religion. (Id.) Further, it appears that the religion that Plaintiff is on record as practicing is Judaism. (See Doc. 2-3.) Given these facts, Plaintiff has failed to state a violation of his First Amendment rights, as he is not a practitioner of the Rastafarian religion and, as such, did not have any religious rights violated by the taking of his "Rasta Crown." Plaintiff's remaining allegations amount to a claim for conversion which, as the Magistrate Judge noted, is properly brought in state court.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 3) is **ADOPTED** with the additional ruling that Plaintiff's claim for a violation of his First Amendment rights is also dismissed without prejudice. **IT IS FURTHER ORDERED** that this action be, and is hereby, dismissed without prejudice to Plaintiff filing a new complaint in the state courts, correcting the defects set out in the Order and Recommendation. A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 3rd day of February, 2016.



United States District Judge