

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Frank K.C. Hertel, Sr.,

Plaintiff,

v.

Case No. 2:18-cv-179

Judge Everett H. Krueger,  
et al.,

Defendants.

OPINION AND ORDER

This is an action filed by plaintiff pursuant to 42 U.S.C. §1983 against Delaware County, Ohio, and various state officials and judges who were involved in plaintiff's state criminal prosecution and subsequent related proceedings. In a July 5, 2018, report and recommendation on an initial screen under 28 U.S.C. §1915(e), the magistrate judge recommended that plaintiff's claims be dismissed on several grounds, including Eleventh Amendment immunity, judicial and prosecutorial immunity, the statute of limitations bar, the unavailability under §1983 of the relief sought, and waiver. By order dated August 16, 2018, this court adopted the report and recommendation and dismissed this action pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim for which relief may be granted.

On August 28, 2018, plaintiff filed a "MOTION TO AMEND OPINION AND ORDER" which cited Fed. R. Civ. P. 52(b). On August 29, 2018, the magistrate judge issued a report and recommendation concerning that motion. The magistrate judge concluded that plaintiff failed to state grounds for relief under Rule 52(b). The magistrate judge also analyzed plaintiff's motion as a motion to alter or amend judgment under Fed. R. Civ. P. 59(e) and a motion for relief from

judgment under Rule 60(b), and concluded that no basis for relief had been shown under those rules. The magistrate judge found no reason to reconsider this court's earlier decision and recommended that the motion be denied.

The report and recommendation specifically advised the parties that objections to the report and recommendation were due within fourteen days, and that the failure to object to the report and recommendation would result in a waiver of the right to *de novo* review by the district judge and a waiver of the right to appeal the judgment of the district court. Doc. 10, p. 5. The time period for filing objections to the report and recommendation has expired, and no objections to the report and recommendation have been filed.

The court agrees with the report and recommendation (Doc. 10), and it is hereby adopted. Plaintiff's motion (Doc. 9) to amend this court's opinion and order of August 16, 2018, is denied. Plaintiff's motion (Doc. 1) for leave to proceed *in forma pauperis* is denied as moot.

Date: September 20, 2018

\_\_\_\_\_ s/James L. Graham  
James L. Graham  
United States District Judge