

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

NATHAN B. MARTIN,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-09-0192-HE
	)	
DIANE BOX, et al.,	)	
	)	
Defendants. )	)	

**ORDER**


Plaintiff Nathan B. Martin, a former state pretrial detainee appearing *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Bana Roberts, who recommends that the action be dismissed for failure to state a claim upon which relief may be granted. She also recommends that the dismissal count as a “strike” pursuant to 28 U.S.C. § 1915(g).

The plaintiff, having failed to object to the Report and Recommendation, waived his right to appellate review of the legal and factual issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). See 28 U.S.C. §636(b)(1)(c); LCvR72.1. Accordingly, the court adopts Magistrate Judge Robert’s Report and Recommendation and **DISMISSES** the action. 28 U.S.C. §§ 1915A(b)(1), 1915(e)(2)(B). After the plaintiff has exhausted or waived his right to appeal, the dismissal

will count as a “prior occasion.” 42 U.S.C. §1915(g).<sup>1</sup>

**IT IS SO ORDERED.**

Dated this 5th day of May, 2009.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>See Mack v. Texas Dept. of, Criminal Justice, 2006 WL 4707000, at \*1 (N.D. Tex. 2006) (plaintiff who was a prisoner at time he filed his action is subject to prohibitions of Prison Litigation Reform Act).