

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

ORDER

Plaintiff Jeremy Allen Russell, a pretrial detainee appearing *pro se* brought this civil rights action under 42 U.S.C. § 1983 against four employees of the Comanche County Detention Center (“CCDC”). The case was referred to U.S. Magistrate Judge Shon T. Erwin for initial proceeding consistent with 28 U.S.C. § 636(b)(1)(B) and (C). Following initial screening pursuant to 28 U.S.C. §§ 1915A and 1915(c)(2)(B), Judge Erwin issued a report and recommendation (the “Report”) recommending dismissal of the complaint for failure to state a claim upon which relief may be granted. Plaintiff has objected to the Report which triggers *de novo* review by this court. Plaintiff has also filed motion to conduct a Martinez report and a motion for a stay of proceedings.

Plaintiff's two claims for relief both center on an allegation that CCDC refused to provide prescribed medication and various defendant's responses or lack of responses regarding those medications. Claim one was for refusal of his medication and claim two was for medical negligence. Plaintiff's medication was offered in a "crushed pill" form, but plaintiff refused to take it in that form. Doc. #1-3.

Plaintiff objects to the Report restating earlier filings that “(1) I will refuse my medaction [sic] crushed (2) I am being refused my [medication] as (1).” Doc. #8, p. 1. Plaintiff goes on to argue that “if [medication] is altered in any shap[e] form or fash[io]n it is illegal.” Doc. #8, p. 2. Further he claims that the crushed pills were not his, but that “the vial did have my name [and] cell # on it.” *Id.*

Plaintiff’s objection is simply a reiteration of his original claim that defendant Ortega refused to provide his medication in a whole-pill form. The court agrees with the Report that plaintiff’s allegations in his first claim “represent nothing more than a disagreement regarding a course of treatment.” Doc. 7, p. 7. Plaintiff’s conclusory allegations that the medication was not his and that taking the crushed pill would in some way violate the law do not alter this analysis. As such, plaintiff has failed to state a claim against defendant Ortega.

Likewise, plaintiff’s second objection is also a reiteration of the facts stated in his complaint regarding the failure of the remaining three defendants to properly respond to grievances or letters regarding his medication. *Id.* at 3. He states defendants lack of “care and refusal to respond to letters and [requests] to staff” show they “were directly involved in refusing” to provide his medication. Plaintiff’s objection fails to show how these defendants were personally involved in the deprivation of his medication. Thus the court agrees with the Report that plaintiff has failed to state a claim against defendants Orr, Hobbs, and Owens.

In addition to his objection to the Report, plaintiff has filed a motion to conduct a Martinez report and a motion to stay this action. “The purpose of a Martinez report is to

ascertain whether there is a factual as well as a legal basis for the prisoner's claims." Gee v. Estes, 829 F.2d 1005, 1007 (10th Cir. 1987). Because the Report's and this court's conclusions are based on plaintiff's own filings, the court finds that no Martinez report is necessary to determine whether there is a factual or legal basis for plaintiff's claims. Similarly, plaintiff's motion to stay requests that the action be stayed until he is housed in a permanent prison with access to legal aid and related supplies. Because the court finds that no further action will be required on the complaint as filed, there is no need to stay this case.

Accordingly, having conducted *de novo* review, the Report [Doc. #7] is **ADOPTED** and the complaint [Doc. #1] is **DISMISSED** without prejudice. Plaintiff's motions for a Martinez report [Doc. #9] and to stay [Doc. #10] are **DENIED**.

IT IS SO ORDERED.

Dated this 17th day of October, 2017.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE