

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

KENT FAULKNER,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. CIV-19-1173-D
)	
JOEL MCCURDY,)	
et al.,)	
)	
<i>Defendants.</i>)	

ORDER

Plaintiff Kent Faulkner, a state prisoner, brought this civil rights action under 42 U.S.C. § 1983 against Defendants Joel McCurdy, Mike McDougal, Scott Crow, and Terri Sample.¹ The matter was referred to United States Magistrate Judge Gary M. Purcell for initial proceedings in accordance with 28 U.S.C. § 636(b)(1)(B) and (C).

On June 22, 2021, the magistrate judge issued a Second Supplemental Report and Recommendation, wherein he recommended Defendants Terri Sample and Mike McDougal’s Motion to Dismiss [Doc. No. 42], as converted to a motion for summary judgment, be granted. *See* Second Supp. Rep. and Rec. [Doc. No. 47]. The magistrate judge outlined Plaintiff’s attempts to comply with the grievance process as to Defendant Sample and Defendant McDougal. *See* Second Supp. Rep. and Rec. [Doc. No. 47 at 13–16, 16–22]. However, “[a]n inmate who begins the grievance process but does not complete it

¹ Plaintiff sued Defendant McCurdy in his individual and official capacities. Plaintiff voluntarily dismissed his claims against McCurdy on June 15, 2021. Plaintiff sued Defendant McDougal in his individual and official capacities.

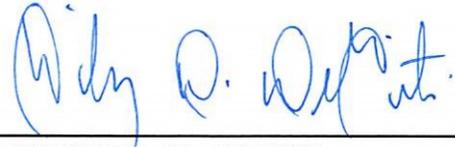
is barred from pursuing a § 1983 claim under PLRA for failure to exhaust his administrative remedies.” *Jernigan v. Stuchell*, 304 F.3d 1030, 1032 (10th Cir. 2002).

Plaintiff timely filed an Objection. [Doc. No. 48]. In his Objection, Plaintiff presents no persuasive argument or authority that would cause this Court to reject the magistrate judge’s conclusions. To the extent Plaintiff attempts to introduce new arguments in his objection, the Court notes that “[i]ssues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.” *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996). Additionally, “[e]ven where the ‘available’ remedies would appear to be futile at providing the kind of remedy sought, the prisoner must exhaust the administrative remedies available.” *Jernigan*, 304 F.3d at 1032 (citing *Booth v. Churner*, 532 U.S. 731, 740 (2001)).

The Court has carefully reviewed the Report and Recommendation, as well as the case record, and fully concurs in the Report and Recommendation. Therefore, the Court, having conducted a *de novo* review, finds that Plaintiff’s Objection should be overruled, and hereby **ADOPTS** the Second Supplemental Report and Recommendation [Doc. No. 47] in its entirety.

IT IS THEREFORE ORDERED that Defendants Terri Sample and Mike McDougal’s Motion to Dismiss [Doc. No. 42] is **GRANTED**. A separate judgment shall be entered accordingly.

IT IS SO ORDERED this 14th day of July, 2021.



TIMOTHY D. DeGIUSTI
Chief United States District Judge