

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

GERRY MOBLEY, JR.,	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 1:14-cv-615
	:	
JAMES BARNACLE, <i>et al.</i> ,	:	
Defendants.	:	

O R D E R

AND NOW, this 15th day of July, 2015, upon consideration of the report and recommendation of the magistrate judge (Doc. 20), filed June 23, 2015, to which no objections were filed, and upon independent review of the record, it is ordered that:

1. The magistrate judge’s report (Doc. 20) is adopted.
2. Defendants’ motion to dismiss (Doc. 16) is granted in part and denied in part.
3. Any claims for monetary damages against Defendants Barnacle and Bickell in their official capacities are dismissed with prejudice. Any claims against these Defendants in their individual capacities may proceed.
4. Plaintiff’s claims for injunctive and declaratory relief are dismissed as moot.
5. Count I, Plaintiff’s First Amendment retaliation claim against Defendant Booher, may proceed.
6. Counts II and VI, Plaintiff’s First Amendment retaliation claims against Defendants Nickum and Myers, are dismissed without prejudice.
7. Count III, the Eighth Amendment Claim against Defendants Bickell and Barnacle, is dismissed without prejudice.

8. Count VII, the Fourth Amendment claim against Defendant Booher, is dismissed with prejudice.

9. Count VIII is dismissed with prejudice.

10. Counts IV and IX are consolidated into one Eighth Amendment excessive force claim. This combined Count is dismissed without prejudice as to Defendants Barnacle and Bickell, but may proceed against the remaining defendants.

11. The supervisory liability claim against Defendant Bickell in Count X is dismissed without prejudice.

12. Count XII is dismissed with prejudice with respect to Defendants Reed, Barnacle, and Bickell. Count XII may proceed against Defendant Booher.

13. Plaintiff may file one final amended complaint in an attempt to correct the deficiencies identified in the magistrate judge's report. Plaintiff is advised that he may only amend the claims that were dismissed without prejudice. The amended complaint must be filed within 21 days of the date of this order, or by August 5, 2015.

14. The above-captioned matter is remanded to the magistrate judge for further proceedings, including a Report and Recommendation on any dispositive motions that may be filed.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge