

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LA'BRENT ROBINSON,
Plaintiff

v.

DAVID VARANO, et al.,
Defendants

Civil No. 3:10-CV-2131

(Judge Kosik) **FILED**
SCRANTON

JUL 09 2013

ORDER

PER M. G. L.
DEPUTY CLERK

AND NOW, this 9th day of July 2013, IT APPEARING TO THE COURT THAT:

1. Plaintiff, La'Brent Robinson, initiated this action on October 15, 2010 by filing, *pro se*, a Complaint pursuant to 42 U.S.C. § 1983. (Doc. 1). Plaintiff also filed a motion for appointment of counsel and two motions for leave to proceed *in forma pauperis*. (Doc. 2, 6, 12). In the Complaint, Plaintiff named seven Defendants: David Varano, Superintendent at SCI-Coal Township; Robert McMillan, Deputy Superintendent, SCI-Coal Township; George Miller, Major of the Guard; Shift Commander Scicchitano; Shift Commander Morris; Security Captain Stetler; and Corrections Officer John Doe. (Doc. 1, p. 2).
2. Plaintiff's original Complaint was screened by Magistrate Judge Thomas M. Blewitt as required by the PLRA. On December 27, 2010, the Magistrate Judge issued a Report and Recommendation ("R&R") recommending that Plaintiff's Complaint be dismissed without prejudice due to his failure to exhaust his DOC administrative remedies. (Doc. 15). The Magistrate Judge further recommended that Plaintiff's motion for appointment of counsel (Doc. 2) be dismissed as moot and that Plaintiff's motions to proceed *in forma pauperis* (Doc. 6, 12) be granted solely for the purpose of filing the action. (*Id.*).
3. Plaintiff filed an Amended Complaint on December 30, 2010. (Doc. 19).
4. On January 25, 2011, we adopted the R&R of the Magistrate Judge and dismissed, without prejudice, Plaintiff's original Complaint and Amended Complaint. (Doc. 21). The case was dismissed without prejudice so Plaintiff could re-institute it after he exhausted his administrative remedies. (*Id.*).
5. On February 18, 2011, Plaintiff filed a 9-page form § 1983 civil rights Amended Complaint. (Doc. 23).
6. In this Amended Complaint, Plaintiff named the following nine Defendants: David A. Varano, Superintendent at SCI-Coal Township; Robert McMillan, Deputy Superintendent, SCI-Coal Township; George Miller, Major of the Guard; Shift Commander Scicchitano; Shift Commander Morris; Security Guard Stetler; SCI-Coal Township; Correctional Officer John Doe; and Correctional Officer Jane Doe. (*Id.* at p. 1-3). All of the Defendants were employees of the Pennsylvania Department of Corrections ("DOC") at SCI-Coal Township during the relevant times of this case.

7. Plaintiff's second Amended Complaint was served on the named Defendants on August 15, 2011. (Doc. 28). Since the two Doe Defendants were not identified, they were not served. The Magistrate Judge issued an Order directing Plaintiff to identify the Doe Defendants, however Plaintiff failed to provide that information. (Doc. 35).
8. On September 20, 2011, the Defendants filed a motion to dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 29). In a support brief, Counsel for Defendants noted that she did not waive service for or enter an appearance on behalf of the two Doe Defendants "because the Commonwealth Attorney's Act, 71 P.S. § 732-101 *et seq.*, precludes appearance for unnamed/unidentified alleged employees, who have not consented to legal representation. 4 Pa. Code § 39.1 *et seq.*; 42 Pa. C.S. § 8525." (Doc. 30, p. 2, n. 1).
9. After two extensions of time, Plaintiff filed his opposition brief on January 4, 2012. (Doc. 45).
10. On February 9, 2012, the Magistrate Judge issued a R&R recommending that Defendants' Motion to Dismiss Plaintiff's Amended Complaint be granted in its entirety. (Doc. 46). Specifically, the Magistrate Judge recommended that Plaintiff's claims for monetary damages against Defendants in their official capacities be dismissed with prejudice; that Defendant SCI-Coal Township be dismissed with prejudice; that Plaintiff's state law breach of contract claim be dismissed with prejudice; that Defendants Varano, Miller, Stetler, Morris, Scicchitano, McMillan, and Bahneman be dismissed with prejudice; that Defendants John Doe and Jane Doe be dismissed without prejudice; and that the case be closed. (*Id.*).
11. On March 23, 2012, Plaintiff filed objections to the R&R on February 9, 2012. (Doc. 49).
12. On July 2, 2012, we issued an Order adopting in part, the Magistrate Judge's R&R. (Doc. 51). Specifically, we dismissed Plaintiff's claims for monetary damages against Defendants in their official capacities; dismissed Plaintiff's state law breach of contract claim; and dismissed Defendants SCI-Coal Township, Varano, Miller, Stetler, Morris, Scicchitano, and McMillan. (*Id.*). We further ordered that Defendant Jane Doe be substituted with Defendant Bahneman. (*Id.*). We allowed Plaintiff's claims against Defendants Bahneman and John Doe to proceed. (*Id.*). Plaintiff was also afforded 30 days to conduct limited discovery to notify the Court of the identity of Defendant John Doe. (*Id.*). The case was remanded to the Magistrate Judge. (*Id.*).
13. On July 5, 2012, the Magistrate Judge issued an order directing service of Plaintiff's Amended Complaint on Defendant CO Bahneman. (Doc. 52). Defendant CO Bahneman filed an Answer to the Amended Complaint on July 11, 2012. (Doc. 53).
14. On August 29, 2012, the Magistrate Judge issued an order substituting Defendant John Doe, and directing service on Defendant CO Dunn. (Doc. 62). Defendant CO Dunn filed an Answer to the Amended Complaint on September 11, 2012. (Doc. 63).

15. The Magistrate Judge set a discovery deadline of November 13, 2012 and a dispositive motion deadline of December 13, 2012. (Doc. 64).
16. On November 28, 2012, Defendants CO Bahneman and CO Dunn jointly filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. (Doc. 67). Defendants additionally filed a brief in support of the motion, a statement of facts, an appendix, and exhibits. (Doc. 68, 69, 70, 71).
17. As explained in the Magistrate Judge's R&R (Doc. 82), Plaintiff asked for and was granted five motions for extensions of time to file his brief in opposition to the motion for summary judgment. (Doc. 72, 73, 74, 75, 76, 77, 78, 79, 80, 81). The opposition brief was originally due December 15, 2012 and Plaintiff was given extensions until April 23, 2013. Plaintiff failed to file a brief in opposition.
18. On May 9, 2013, the Magistrate Judge issued an R&R recommending that we grant Defendants' motion for summary judgment. (Doc. 82).
19. Pursuant to Local Rule 72.3, Petitioner was given fourteen (14) days, after being served with a copy of the Report and Recommendation, to make any objections to the Magistrate Judge's proposed findings, recommendations, or report. Plaintiff filed a motion for extension of time to file his objections on May 20, 2013. (Doc. 83). This motion was granted on May 23, 2013 and Plaintiff was given until June 28, 2013. (Doc. 84).
20. Plaintiff has failed to file objections or any other motion.

AND IT FURTHER APPEARING THAT:

21. If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C.A. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987).
22. We have reviewed the thorough Report of the Magistrate Judge and we agree with the Magistrate Judge's conclusions. Thus, Defendants' motion for summary judgment will be granted.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated May 9, 2013 (Doc. 82) is **ADOPTED**;
2. Defendants' Motion for Summary Judgment (Doc. 67) is **GRANTED**;
3. Judgment is hereby entered in favor of Defendants and against Plaintiff; and
4. The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge.



Edwin M. Kosik
United States District Judge