UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CALVIN KEITH,
Plaintiff,

v.

MICHAEL DELEO, et al.,
Defendants.

CIVIL ACTION NO. 3:13-CV-2399

(Judge Kosik)

MEMORANDUM AND ORDER

AND NOW, this 30th day of October, 2013, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, Calvin Keith, a prisoner confined at the Lebanon County Prison, Pennsylvania, filed the instant civil rights action pursuant to 42 U.S.C. §1983 on September 17, 2013;

(2) The action was assigned to Magistrate Judge Martin C. Carlson for Report and Recommendation;

(3) On September 24, 2013, the Magistrate Judge issued a Report and Recommendation (Doc. 8) wherein he recommended that Plaintiff's case be dismissed without prejudice as to the Supervisory Defendants, but that Plaintiff be given an opportunity to file an Amended Complaint;

(4) Specifically, the Magistrate Judge finds that Plaintiff has not alleged sufficient facts to give rise to supervisory liability, that Plaintiff fails to articulate an Eighth Amendment claim, and that Plaintiff's claim for a specific amount of damages should be stricken;

(5) Plaintiff has failed to file timely objections to the Magistrate Judge's Report and Recommendation; however, on October 17, 2013, Plaintiff filed an "Amendment to Civil Complaint" (Doc. 10);

AND, IT FURTHER APPEARING THAT:

(6) 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);

(7) We have considered the Magistrate Judge's Report and we concur with his recommendation;

(8) Because Plaintiff has filed an Amended Complaint (Doc. 10), we will remand the action to the Magistrate Judge for further proceedings.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Doc. 3) is **GRANTED**;

(2) The September 24, 2013 Report and Recommendation of Magistrate Judge Martin C. Carlson (Doc. 8) is **ADOPTED**;

(3) Plaintiff's Complaint (Doc. 1) is **DISMISSED**; however, Plaintiff's amended complaint (Doc. 10) will be the new complaint in this action; and

(4) The above-captioned case is **REMANDED** to the Magistrate Judge for further proceedings.

Edwin M. Kosik
United States District Judge