UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

AMANDA GESSNER,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, et al.,
Defendants.

Civil No. 3:14-CV-111

(Judge Kosik)

**ORDER**

AND NOW, this 12th day of March, 2014, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, Amanda Gessner, an inmate confined at the State Correctional Institution - Muncy, Pennsylvania, filed the instant civil rights action pursuant to 42 U.S.C. §1983 on January 22, 2014;

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

(3) On January 23, 2014, the Magistrate Judge issued a Report and Recommendation (Doc.5) wherein he recommended that Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Doc. 2) be granted; that Plaintiff's claim for damages against the Commonwealth of Pennsylvania Department of Corrections be dismissed; that Plaintiff's claim seeking criminal prosecution of a third party be dismissed; and that the complaint be served on the individual Defendant;

(4) Specifically, the Magistrate Judge found that the claim for damages against the Commonwealth of Pennsylvania Department of Corrections is barred by the Eleventh Amendment and that a civil lawsuit cannot be used as a vehicle for instituting a criminal prosecution of a third party;

(5) Plaintiff has failed to file timely objections to the Magistrate Judge's Report and Recommendation;

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;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Doc. 2) is **GRANTED**;

(2) The January 23, 2014 Report and Recommendation of Magistrate Judge Martin C. Carlson (Doc. 5) is **ADOPTED**;

(3) Plaintiff's claims for damages against the Commonwealth of Pennsylvania Department of Corrections, and claim seeking criminal prosecution of a third party, are **DISMISSED**; and, the action will **PROCEED** against the individual Defendant; and

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

Edwin M. Kosik
United States District Judge