

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

THERIN POWELL,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 4:21-1565
	:	
v.	:	(JUDGE MANNION)
	:	
DETECTIVE TYSON	:	
HAVENS, <u>et al.</u>,	:	
	:	
Defendants	:	
	:	

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick, which recommends that the instant action be dismissed without leave to amend. (Doc. 7). The plaintiff has failed to file objections to the report and recommendation.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court

may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Upon initial screening of the plaintiff's complaint filed pursuant to 42 U.S.C. §1983, Judge Mehalchick determined that, although the plaintiff is raising a number of constitutional claims, he is, in fact, challenging the fact or duration of his confinement and, as such, the matter is properly brought through a habeas corpus petition as opposed to a civil rights complaint. Judge Mehalchick has recommended that the plaintiff's complaint be dismissed without leave to amend as §1983 is not the appropriate avenue for the relief the plaintiff seeks. The plaintiff has not filed any objections to Judge Mehalchick's report.

Upon review of Judge Mehalchick's report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Mehalchick to her conclusions. As such, the court will adopt the report and recommendation in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1)** The report and recommendation of Judge Mehalchick (**Doc. 7**) is **ADOPTED IN ITS ENTIRETY** as the decision of the court.

(2) The plaintiff's complaint (**Doc. 1**) is **DISMISSED WITHOUT LEAVE TO AMEND.**

(3) The Clerk of Court is directed to **CLOSE THIS CASE.**

s/ Malachy E. Mannion

MALACHY E. MANNION

United States District Judge

DATE: November 18, 2021

21-1565-01