

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>JASON CISNE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 1:19-CV-270</b>
	)	
<b>A. HAAG, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM**

**ORDER**

This action was received by the Clerk of Court on September 19, 2019 and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff is an inmate representing himself pro se. In his complaint, Plaintiff alleges that Defendants Corrections Officers Haag and Hiler violated his Eighth Amendment right to be free from cruel and unusual punishment when they used excessive force against him. ECF No. 4.

At Defendants' request, Magistrate Judge Lanzillo held an evidentiary hearing pursuant to *Small v. Camden County*, 728 F.3d 265 (3d Cir. 2013). Judge Lanzillo issued a Report and Recommendation recommending that this Court hold that Plaintiff's administrative remedies were unavailable under the Prison Litigation Reform Act. ECF No. 53. Despite being allowed to do so, neither party filed Objections to the Report and Recommendation.

After de novo review of the complaint, evidence, and transcript, together with the Report

and Recommendation, the following order is entered:

AND NOW, this 8th day of September, 2021;

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on July 29, 2021 [ECF No. 53] is adopted as the opinion of the Court. Defendants have failed to establish their affirmative exhaustion defense.

/s/ Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
United States District Judge