

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

JOHN SIMPSON,) Case No. 3:21-cv-192
)
) DISTRICT JUDGE KIM R. GIBSON
Plaintiff,) MAGISTRATE JUDGE MAUREEN P. KELLY
)
v.)
)
W.L. GORE & ASSOCIATES, INC.;)
TYLER MEMORIAL HOSPITAL;)
LUZERNE COUNTY PRISON; and)
SUPERINTENDENT BARRY R. SMITH,)
)
Defendants.)

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Maureen P. Kelly ("Judge Kelly") for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

Plaintiff John Simpson ("Plaintiff") is an inmate currently incarcerated at the State Correctional Institution at Houtzdale, Pennsylvania ("SCI-Houtzdale"). Plaintiff initiated the instant suit by filing a Complaint in the United States District Court for the Middle District of Pennsylvania. (ECF No. 1). On July 19, 2021, United States Magistrate Judge Martin C. Carlson ("Judge Carlson") issued a Report and Recommendation recommending that Plaintiff's Complaint be dismissed without prejudice. (ECF No. 9). Plaintiff failed to enter timely objections to Judge Carlson's Report and Recommendation, and on August 12, 2021, Chief Judge Matthew W. Brann ("Judge Brann") issued an order adopting Judge Carlson's Report and Recommendation and granting Plaintiff general leave to amend his Complaint. (ECF No. 11).

On September 21, 2021, Plaintiff filed (1) a Motion for Reconsideration or Relief from Judgment or Order of Dismissal (ECF No. 12), (2) an untimely Amended Complaint (ECF No. 14), and (3) a Motion to Accept Amended Complaint (ECF No. 13). On September 24, 2021, Judge Brann issued an order denying Plaintiff's motion to reconsider and accepting the filing of the Amended Complaint. (ECF No. 15).

On October 28, 2021, Judge Brann issued an order dismissing Defendant Luzern County Prison and transferring the case to the United States District Court for the Western District of Pennsylvania. (ECF No. 16). Following this case's transfer, Judge Kelly issued a Report and Recommendation on November 30, 2021, recommending that any claims against Defendants W.L. Gore & Associates, Inc., and Tyler Memorial Hospital be stricken from the Amended Complaint. (ECF No. 18). Plaintiff was notified that pursuant to 28 U.S.C. § 636(b)(1), he had until December 17, 2021 to file objections to the Report and Recommendation. (*Id.* at 4). Upon motion by the Plaintiff (ECF No. 19), Judge Kelly extended the deadline to file timely objections to the Report and Recommendation until March 10, 2022. (ECF No. 20). Plaintiff timely filed objections on March 8, 2022. (ECF No. 21).

Thereafter, on June 8, 2022, Plaintiff filed a Petition for Review and Correction or Modification of the Record. (ECF No. 24). In his motion, Plaintiff states that, upon review of Judge Brann's May 6, 2022 Memorandum Opinion and Order (ECF No. 24-1) and Judge Kelly's Report and Recommendation (ECF No. 24-2), Plaintiff became aware that the Amended Complaint found at ECF No. 14 is not the Amended Complaint that Plaintiff believed he had mailed to the Court. (ECF No. 24 at ¶ 5). Plaintiff cites his own literacy issues as well as his reliance on fellow inmates who assist him in preparing and sending his court documents as a

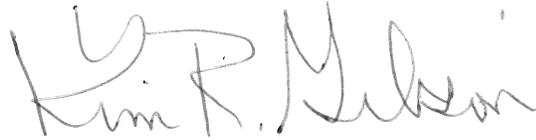
basis for filing the wrong Amended Complaint. (*Id.*). Accordingly, Plaintiff moves the Court to direct the Clerk to review and amend the Amended Complaint found at ECF No. 14 to ensure it comports with the version of the Amended Complaint he intended to file with the Court. (*Id.* at 6).

After *de novo* review of the record in this matter, including Plaintiff's Amended Complaint (ECF No. 14), the Report and Recommendation (ECF No. 18), Plaintiff's objections to the Report and Recommendation (ECF No. 21), and Plaintiff's Petition for Review and Correction or Modification of the Record (ECF No. 24), the Court finds that Plaintiff's objections are without merit. However, upon consideration of Plaintiff's Petition for Review and Correction or Modification of the Record (*Id.*), the Court will direct the Clerk of Court to docket Plaintiff's Amended Complaint found at ECF No. 24-2 (Exhibit B) as Plaintiff's Second Amended Complaint. Accordingly, the following order is entered:

AND NOW, this 2nd day of August, 2022, **IT IS HEREBY ORDERED** that the Amended Complaint (ECF No. 14) is **DISMISSED WITHOUT PREJUDICE**. The Court **ADOPTS** the Report and Recommendation (ECF No. 18) as the opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court is directed to docket Plaintiff's Amended Complaint found at ECF No. 24-2 (Exhibit B) as Plaintiff's Second Amended Complaint.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson". The signature is written in a cursive style with a large initial "K" and "G".

**THE HONORABLE KIM R. GIBSON
UNITED STATES DISTRICT JUDGE**

Notice to by U.S. Mail to:

John Simpson, DOC #MQ9395
SCI Houtzdale
P.O. Box 1000
209 Institution Drive
Houtzdale, PA 166