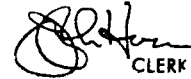


FILED

SEP 09 2015

 CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

\*\*\*\*\*

SHANE DOUGLAS BELL,

Plaintiff,

v.

WILLIAM VOIGHT, Corrections Officer  
at South Dakota State Penitentiary,  
individual and official capacity;  
JEREMY WENDLING, Corrections  
Officer Sgt. at South Dakota State  
Penitentiary, individual and official capacity;  
SAMUEL YOST, Corrections Officer, Cpl.  
at South Dakota State Penitentiary,  
individual and official capacity;  
JESSICA COOK, Unit Manager at South  
Dakota State Penitentiary,  
individual and official capacity;  
JOHN DOE #1, Corrections Officer  
at South Dakota State Penitentiary,  
individual and official capacity;  
DARIN YOUNG, Warden at  
South Dakota State Penitentiary,  
individual and official capacity;  
JOHN DOE #2, Corrections Officer  
at South Dakota State Penitentiary,  
individual and official capacity;

Defendants.

CIV. 14-4111

ORDER

\*\*\*\*\*

The Court has conducted a de novo review of this file. Magistrate Judge Duffy filed a Report and Recommendation on this case on July 23, 2015, recommending that Defendants' Motion for Summary Judgment be granted in its entirety and each of Plaintiff Shane Bell's claims be dismissed with prejudice. Plaintiff Bell timely objected to the Report and Recommendation on August 5, 2015.

On September 8, 2015 Plaintiff Bell filed a Motion to Amend Complaint with Court's Permission.

Plaintiff complains that he has been precluded to conduct discovery, primarily to document that he was not provided medical care on the date of the incident that resulted in Plaintiff's injury on December 3, 2013. For purposes of ruling on the Motion for Summary Judgment and for the Report and Recommendation, it has been assumed by Magistrate Judge Duffy and by this Court that Plaintiff was not provided medical care on December 3, 2013. Accordingly, even if discovery would confirm that no medical care was provided on December 3, 2013, that proof would be no more favorable for Plaintiff than what the Magistrate Judge and this Court have already assumed. Accordingly, there is no basis to deny the Summary Judgment request and to direct that discovery proceed before ruling on the Summary Judgment Motion.

There are some disputed facts in this case, but there is no genuine issue of material disputed fact. In addition, Magistrate Judge Duffy and this Court have viewed the facts, and inferences from those facts, in the light most favorable to the non-moving party.

To begin with, the Court agrees that Plaintiff Bell had a serious medical need with the "mildly displaced fracture of the left zygomatic arch. Remaining facial bones appear intact." Exhibit 9 to Document 45-15, the radiography report of Dr. Kurt Schellhas, M.D.

Although Plaintiff reiterates his positions in the Objections to the Report and Recommendation, no new material is presented. Plaintiff submitted his own and prisoner Shawn Runquist's Affidavits on August 5, 2015, in opposition to the Report and Recommendation. Neither of those Affidavits change the considerations which were before Magistrate Judge Duffy and which are now before this Court.

Accordingly, this Court denies the Objections to the Report and Recommendation and adopts the Report and Recommendation in its entirety.

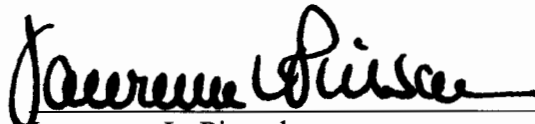
Plaintiff also filed his Motion to Amend Complaint on September 8, 2015. The allegations proposed would not alter this Court's ruling, and accordingly to allow the amendment would be a futility, and the request to amend the Complaint is denied. Accordingly.

IT IS ORDERED:

1. That the Magistrate Judge's Report and Recommendation, Doc. 69, is ADOPTED by the Court, and Plaintiff's Objections to the Report and Recommendation, Doc. 72, are DENIED.
2. That Defendants' Motion for Summary Judgment, Doc. 44, is GRANTED.
3. That Plaintiff's Complaint is dismissed with prejudice.
4. That Plaintiff's Motion to Amend Complaint, Doc. 73, is DENIED.

Dated this 9<sup>th</sup> day of September, 2015.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:

JOE HAAS, Clerk

By Bob Peterson  
Deputy