Shelton v. Upton, et al Doc. 15

| UNITED STATES DISTRICT COURT | EASTERN DISTRICT OF TEXAS |
|------------------------------|--------------------------------|
| MONTY SHELTON, | § |
| Plaintiff, | § § 8 |
| versus | § CIVIL ACTION NO. 1:08-CV-677 |
| JODY UPTON, et al., | 8 8 8 |
| Defendants. | 8 8 |

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Monty Shelton, an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought the above-styled action.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed for failing to state a claim upon which relief may be granted based on plaintiff's failure to exhaust available administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes Plaintiff's objections are without merit. The above-styled lawsuit was filed on November 18, 2008. Plaintiff admits he did not exhaust the administrative remedy process until February 10, 2009. Under 42 U.S.C. § 1997e(a), prisoners must exhaust administrative remedies before filing a lawsuit, rather than while the lawsuit is pending. *See Clifford v. Gibbs*, 298 F.3d 328, 332 (5th Cir. 2002); *Wendell v. Asher*, 162 F.3d 887, 891 (5th Cir. 1998). Accordingly, plaintiff's complaint should be dismissed.

ORDER

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 6th day of July, 2009.

Marcia A. Crone

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE