

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

KELVIN ANDRE SPOTTS §
VS. § CIVIL ACTION NO. 1:17-CV-225
UNITED STATES OF AMERICA §

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

Plaintiff Kelvin Andre Spotts, a federal prisoner confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this civil action pursuant to the Federal Tort Claims Act against the United States of America.

The court ordered that this matter be referred 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 dismissing the action pursuant to 28 U.S.C. § 1915(e) because it is barred by the statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted 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 the objections are without merit. Plaintiff claimed that he did not intend to file a new action, and that the complaint should have been filed in his previous action. In response to the objections, the Magistrate Judge entered a second Report and Recommendation recommending dismissing the

action and filing the new complaint in civil action number 1:07-CV-159. Plaintiff also filed objections to the second report, and he requested that this action be consolidated with cause number 1:17-CV-224. This action and cause number 1:17-CV-224 both concern the conditions of confinement at the federal prison in Beaumont Texas after Hurricane Rita made landfall in 2005. Both actions are clearly barred by the statute of limitations. Therefore, the motion to consolidate the actions will be denied, and this action will be dismissed as barred by the statute of limitations.

ORDER

Accordingly, plaintiff's objections (document no. 4) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 2) is **ADOPTED**. Plaintiff's motion to consolidate (document no. 6) is **DENIED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So Ordered and Signed

Aug 17, 2017



Ron Clark, United States District Judge