

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

RAY LANDON WARMSLEY §  
v. § CIVIL ACTION NO. 5:10cv2  
RICK THALER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Ray Warmsley, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Warmsley complains of an incident in which his Bible was confiscated and “a near riot” took place. He also complains, more generally, of TDCJ Administrative Directive 03.72, governing inmate property. The Defendants were ordered to answer the lawsuit and filed a motion for summary judgment, as well as a motion to dismiss part of the lawsuit as frivolous. Warmsley did not file a response to this motion, although he has filed a motion for a pre-trial conference.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed because Warmsley has filed at least three previous lawsuits or appeals which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted, but did not pay the full filing fee, nor did he show that he is in imminent danger of serious physical injury as of the time of the filing of the lawsuit. The Magistrate Judge thus recommended that Warmsley’s *in forma pauperis* status be revoked and that Warmsley’s case be dismissed with

prejudice as to its refiling *in forma pauperis*, but without prejudice to its refiling without seeking *in forma pauperis* status and upon payment of the full fee.

Warmesley received a copy of the Magistrate Judge's Report on or before March 7, 2011, but has filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 31) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff Ray Warmesley's *in forma pauperis* status is hereby REVOKED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory \$350.00 filing fee. It is further

ORDERED that should the Plaintiff pay the full filing fee within 30 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as through the full fee had been paid from the outset. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED this 11th day of April, 2011.**

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE