

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

RALPH B. SMITH §
v. § CIVIL ACTION NO. 5:10cv58
OLIVER BELL, ET AL. §

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

The Plaintiff Ralph Smith, 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. As Defendants, Smith named Board of Corrections Chairman Oliver Bell; TDCJ-CID Director Rick Thaler; Warden David Hudson; Warden Jeff Catoe; Warden Jeff Calfee; Major Gary Gray; Major Roger McDonald; unnamed members of the Telford Unit Classification Committee; and the Administrator of Classification for TDCJ-CID. He originally named former TDCJ-CID Director Brad Livingston as a Defendant, but removed Livingston’s name from his amended complaint filed May 26, 2010. Smith also named Region II Director Brian Rodeen as a Defendant in his original complaint, but removed Rodeen from his amended complaint.

Smith hired a process server, and effected service of process upon Bell, Thaler, Hudson, and Rodeen. None of the other Defendants were ever served. These four Defendants have answered and have filed a motion for summary judgment. Smith has also filed a motion for summary judgment arguing that the Magistrate Judge to whom the case was referred had no jurisdiction to enter orders in the case because neither party had consented to allow the Magistrate Judge to enter final judgment.

After review of the pleadings and the summary judgment evidence, the Magistrate Judge issued a Report on January 25, 2011, recommending that the Defendants' motion for summary judgment be granted and that the lawsuit be dismissed. The Magistrate Judge set out the standards applicable to summary judgments and to claims of deliberate indifference to safety in the Eighth Amendment context. The Magistrate Judge considered Smith's claims concerning indifference to safety, due process and equal protection violations, and denial of access to recreation, and determined that none of these contained merit. Finally, the Magistrate Judge concluded that the Defendants were entitled to the defense of qualified immunity.

Smith received a copy of the Magistrate Judge's Report on January 27, 2011, but has filed no objections thereto. Instead, on February 9, 2011, he filed a notice of interlocutory appeal of a previous order entered by the Court, denying his motions for a temporary restraining order, for placement in protective custody, and for emergency protection. He has also sought leave to pursue this appeal *in forma pauperis*. Because Smith did not file objections to the Report of the Magistrate Judge, 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. 63) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendants' motion for summary judgment (docket no. 57) is GRANTED and that the above-styled civil action be and hereby is DISMISSED with prejudice as to the Defendants Oliver Bell, Rick Thaler, and David Hudson, and DISMISSED without prejudice as to all other Defendants. It is further

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

SIGNED this 28th day of February, 2011.

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

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE