

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

STEVEN GUEVARA §
v. § CIVIL ACTION NO. 5:11cv196
RICKY HENRY §

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

The Plaintiff Steven Guevara, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. 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. The sole named Defendant is Officer Ricky Henry.

Guevara complains of an alleged use of force incident which occurred on March 18, 2010. The Defendant was ordered to answer and filed a motion for summary judgment, to which Guevara has filed a response.

After review of the pleadings, the Magistrate Judge issued a Report on September 11, 2012, recommending that the motion for summary judgment be granted and that the lawsuit be dismissed. A copy of this Report was sent to Guevara at his last known address, return receipt requested, but no objections have been received; accordingly, 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 reviewed the pleadings in this cause and 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. 36) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendant's motion for summary judgment (docket no. 27) is GRANTED and the above-styled civil action be and hereby is DISMISSED with prejudice to its being re-filed until such time as the pre-conditions of Heck v. Humphrey, 512 U.S. 477 (1994) are met - in other words, Guevara's lawsuit is dismissed with prejudice until such time as he can show that the disciplinary case which he received in connection with this incident has been overturned, expunged, set aside, or called into question through the issuance of a federal writ of habeas corpus. See DeLeon v. City of Corpus Christi, 488 F.3d 649, 657 (5th Cir. 2007). It is further

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

It is SO ORDERED.

SIGNED this 27th day of September, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE