

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

ROBERT LESLIE CALDWELL §
v. § CIVIL ACTION NO. 5:12cv24
RICK THALER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

The Plaintiff Robert Caldwell, 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.

Caldwell complained that he received a false disciplinary case and was placed in lockup, where he was “tortured” by being given inadequate food resulting in the loss of 25 pounds. He filed a motion and a supplemental motion for summary judgment setting out his version of the facts and requesting summary judgment on that basis. Caldwell also argues the Defendants’ actions are felonies. The Defendants filed a response asserting the disciplinary case has been overturned, Caldwell did not show he had been “tortured,” and Caldwell cannot bring criminal charges in a civil action.

On May 30, 2013, the Magistrate Judge issued a Report recommending that Caldwell’s motion and supplemental motion for summary judgment be denied. The Magistrate Judge set out the applicable summary judgment standards and determined that Caldwell failed to show there were no undisputed issues of material fact or that he is entitled to judgment as a matter of law. The

Magistrate Judge also concluded Caldwell's claims concerning the disciplinary case were moot in that the case had been overturned and that Caldwell did not have a constitutional right to have other persons prosecuted for the alleged felonies.

Caldwell filed objections to the Magistrate Judge's Report on June 14, 2013. In his objections, Caldwell asserts he never should have been placed in lockup for the disciplinary case and that he was found guilty of the offense without any evidence having been brought against him. He objects to the affidavit of Lt. Sidney Arnold, which was attached to the Defendants' motion for summary judgment, and denies telling Lt. Arnold he was getting paid to bring in tobacco. Caldwell also states that Arnold did not testify at his disciplinary hearing.

The Court has conducted a careful *de novo* review of the pleadings in this cause, the Report of the Magistrate Judge, and, the Plaintiff's objections. Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 27) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for summary judgment (docket no. 17) and supplemental motion for summary judgment (docket no. 22) are hereby DENIED.

It is SO ORDERED.

SIGNED this 26th day of June, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE