

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

CHRISTOPHER M. JUSTICE                   §  
v.   §       CIVIL ACTION NO. 5:17cv62  
TEXAS DEPARTMENT OF CRIMINAL   §  
JUSTICE

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Christopher Justice filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court referred the case 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.

Plaintiff complains of receiving disciplinary action for refusing a housing assignment event and states that he has a right to refuse housing under the Americans with Disabilities Act. Docket No. 1 at 1. Plaintiff contends that the disciplinary case caused him to lose classification and custodial status, making it impossible for him to make parole. *Id.* Plaintiff states he believed the case was in retaliation for his having filed a lawsuit against the Texas Board of Pardons and Paroles. *Id.*

Plaintiff also asserts that he had been moved to 8 Building and has not been allowed to take showers. *Id.* He stated he had not yet been fed dinner on the evening he was drafting the lawsuit, placing him in danger of starvation. *Id.*

The Magistrate Judge determined Plaintiff has previously filed at least three lawsuits or appeals which were dismissed as frivolous or for failure to state a claim upon which relief may be granted. Docket No. 3 at 1–2. Consequently, the Magistrate Judge stated Plaintiff could not proceed under the *in forma pauperis* statute unless he showed he was in imminent danger of

serious physical injury as of the time of the filing of the lawsuit. 28 U.S.C. §1915(g); *Baños v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998).

After reviewing the pleadings, the Magistrate Judge concluded Plaintiff did not pay the full filing fee and did not show he was in imminent danger of serious physical injury as of the filing of the lawsuit. Docket No. 3 at 2. The Magistrate Judge therefore concluded Plaintiff's lawsuit is barred by the three- strike provision of 28 U.S.C. §1915(g). *Id.*

Plaintiff received a copy of the Magistrate Judge's Report on April 4, 2017, *see* Docket no. 4, but 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. *Dougllass 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 determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

**ORDERED** the Report of the Magistrate Judge (Docket No. 3) is **ADOPTED** as the opinion of the District Court. It is further

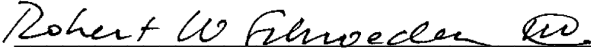
**ORDERED** the Plaintiff's application for leave to proceed *in forma pauperis* (Docket No. 2) is **DENIED** and the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full statutory filing fee. It is further

**ORDERED** that should the Plaintiff pay the full filing fee within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as though the full

fee had been paid from the outset. Because Justice is ineligible to proceed *in forma pauperis*, the full filing fee is \$400.00. Payment of the full filing fee will not affect a frivolousness analysis nor the requirement of exhaustion of administrative remedies. It is further

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

**SIGNED this 14th day of June, 2017.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE