

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

ISIDORO MARTINEZ #740298 §
v. § CIVIL ACTION NO. 6:08cv396
BRAD LIVINGSTON, ET AL. §

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

The Plaintiff Isidoro Martinez, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations 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.

Martinez says in his complaint that prison officials "are hooking up cells to my cell" and placing sensors so that other inmates and guards can hear everything he says or does. He states that a device has been placed in the back of the vent of his cell which can be switched on so as to "mess with my body systems." Guards shoot him in the eye with laser lights and when he files medical requests, other inmates are called out instead of him; he states that inmates and guards get into his throat so that he sounds different. After discussing a hunger strike he briefly went on, Martinez says that the medical department has him hooked up to a device so that they can "play homosexual games" with him, including whispering to him that he has a cellmate and that the cellmate is having sexual activity with him. He can hear voices of inmates from other units, and these voices say that the wardens are his cellmates and are sexually abusing him. He says that he can hear clicking sounds from behind the toilet in his cell, indicating that there is a tape recorder being turned on and off, and

that other inmates impersonate him for the purpose of going to the infirmary or the medical department under his name.

After review of the pleadings, the Magistrate Judge issued a Report on October 14, 2008, recommending that the lawsuit be dismissed. The Magistrate Judge observed that many of Martinez's claims simply repeated allegations which he had made in a previous lawsuit, styled Martinez v. Baker, et al., civil action no. 6:07cv558 (E.D.Tex., dismissed March 24, 2008). An evidentiary hearing was held in that prior lawsuit, and the evidence showed that Martinez has been diagnosed with "delusional disorder, schizophrenia, paranoid type." In the present case, the Magistrate Judge concluded that Martinez's claims were legally or factually frivolous, and that he had failed to exhaust his administrative remedies.

Martinez filed objections to the Magistrate Judge's Report on October 27 and October 29, 2008. In his October 27 objections, Martinez complains that the Court did not do any investigation and insists that he is not delusional. He says that he was moved into another cell which was already "wired and tapped," and that he can hear his neighbor wiring the tables and heard buzzing noises from the wall. He then saw lasers coming out of the wall, hitting him in the eye. He complains about officers mistreating other inmates and says that he has family members who are in the legal and medical fields and so he will reopen the case with their assistance if it gets dismissed.

In his October 29 objections. Martinez says that he suffered retaliation after his first case was dismissed, and that in his first case, the Court "took the State's side" by using words such as "paranoid" and "delusional." He says that he could not exhaust administrative remedies because no one would listen to him, and insists that nothing is wrong with him. Martinez says that he wants to take a polygraph test, but not at his unit, because the computerized laser changes words around. He says that he received letters from his sister-in-law and his cousin, but they did not make any sense, so he thinks someone else wrote them and "played my family's part." He again discusses the laser lights that guards used to burn his eye, and says that he will reopen his case once he gets a free

world attorney. Martinez's objections demonstrate that the Magistrate Judge's conclusion that his lawsuit is legally and factually frivolous was correct.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original complaint, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all other pleadings and documents in the case. Upon such review, the Court has determined that the Magistrate Judge's Report is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to exhaust administrative remedies. It is further

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

So ORDERED and SIGNED this 23rd day of December, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**