

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

MICHAEL McMULLEN §
v. § CIVIL ACTION NO. 6:09cv426
DIRECTOR, TDCJ-CID §

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

The Petitioner Michael McMullen, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the matter 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.

McMullen was charged with the disciplinary offense of possession of money inside a penal institution. He complained that he did not receive timely notice of the charges, no physical evidence was offered at the hearing, there were four different cases written by three different officers, all of which charged the same offense, McMullen beat one of the cases so it was re-written with a different time, date, and charging officer, the prison officials were retaliating against an inmate named Pate by implicating McMullen in the offense, the report and testimony were falsified, and the case was falsified by statements that it was a “cell phone case” when it was not.

The Magistrate Judge ordered the Respondent to answer the petition. McMullen filed a response to the answer. After review of the pleadings and evidence, the Magistrate Judge issued a Report recommending that the petition be denied and that McMullen be denied a certificate of

appealability *sua sponte*. A copy of this Report was sent to McMullen at his last known address, return receipt requested, but no objections have been received; accordingly, McMullen 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. 15) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Michael McMullen is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

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

So ORDERED and SIGNED this 23rd day of March, 2011.

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

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**