

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

CRAIG BYRON THARP §  
v. § CIVIL ACTION NO. 6:10cv272  
JOHN DOE §

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

The Plaintiff Craig Tharp, 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 lawsuit 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.

Tharp complained of a use of force which he says took place on May 25, 2008, when a Smith County sheriff’s deputy threw him to the floor while he, Tharp, was in handcuffs and chains. The complaint was signed on May 26, 2010, and filed on May 27, 2010.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed because of the expiration of the statute of limitations. The Magistrate Judge noted that because Tharp was not incarcerated, the “mailbox rule” did not apply, and so the date that the complaint is received by the district clerk is the operative date for limitations purposes. The Magistrate Judge observed that an action accruing on May 25, 2008, must be filed by May 25, 2010, to fall within the limitations period, and so Tharp’s complaint, which was received by the Clerk two days later, is barred by the statute of limitations. Finally, the Magistrate Judge noted that Tharp had

shown no basis, legal or equitable, upon which the limitations period could be tolled, and recommended that the lawsuit be dismissed.

This Report gave Tharp notice that the Court was contemplating a dismissal on limitations grounds, and provided him with an opportunity to object to this contemplated dismissal through the standard objections procedure. Tharp received a copy of the Report on July 15, 2010, 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. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).


The Court has carefully 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 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 state a claim, under 28 U.S.C. 1915(e)(2)(B), the proper statute applicable to persons not in confinement. Finally, it is

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

**SIGNED this 15th day of October, 2010.**

  
MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE