

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

ROGER RAMIREZ §
v. § CIVIL ACTION NO. 6:11cv356
G. VICKERY, ET AL. §

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

The Plaintiff Roger Ramirez, 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.

Ramirez complains of the legality of a disciplinary case which he received for possession of a cell phone. After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice until such time as Ramirez showed that the disciplinary case had been overturned, set aside, or otherwise declared invalid. Edwards v. Balisok, 520 U.S. 641, 648-49 (1997); Fields v. Pace, 128 Fed.Appx. 384, 2005 WL 856048 (5th Cir., April 14, 2005). The Magistrate Judge noted that Ramirez’s claims “necessarily implied” the invalidity of the disciplinary case which he received, and so Ramirez could not proceed with a Section 1983 lawsuit challenging the case until his habeas corpus remedies were exhausted.

A copy of the Magistrate Judge’s Report was sent to Ramirez at his last known address, return receipt requested, but no objections have been received; accordingly, Ramirez 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 Plaintiff's pleadings and the Report of the Magistrate Judge. Upon such review, the Court has concluded that 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 that the Report of the Magistrate Judge (docket no. 17) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice until such time as Ramirez's habeas corpus remedies on the challenged disciplinary case have been successfully exhausted - in other words, when the disciplinary case of which Ramirez complains has been overturned, set aside, expunged, or otherwise declared invalid. The dismissal of this civil rights lawsuit shall not prevent Ramirez from seeking habeas corpus relief regarding this disciplinary case or from seeking to have it overturned through any available administrative channels. The dismissal of this lawsuit also shall not prevent Ramirez from re-filing his claim at such time as he can show that the disciplinary case has been overturned or set aside, but he cannot refile this claim until he can make such a showing. 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 10th day of May, 2012.

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

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**