

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

CEDRIC BRINSON §
v. § CIVIL ACTION NO. 6:11cv704
COFFIELD UNIT, ET AL. §

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

The Plaintiff Cedric Brinson, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. 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.

Brinson complained of a disciplinary case which he received for allegedly assaulting an officer. The only relief which he sought was that the case be overturned. On January 31, 2012, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed with prejudice as to the refiling of a civil rights action challenging the disciplinary case, but without prejudice as to Brinson's right to seek relief through habeas corpus, the proper vehicle for challenging a prison disciplinary proceeding. Clarke v. Stalder, 154 F.3d 186, 189 (5th Cir. 1998). The Magistrate Judge also stated that in the event that the disciplinary case is overturned, Brinson may seek damages in a subsequent Section 1983 action.

Brinson received a copy of this Report on February 3, 2012. He did not file objections *per se*; instead, he wrote a letter saying that he needs legal help and he has already filed a habeas corpus petition. As the Magistrate Judge observed, habeas corpus is the proper means through which a

prison disciplinary proceeding may be challenged. To the extent that Brinson's letter may be construed as objections to the Magistrate Judge's Report, any such objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Plaintiff's complaint, the Report of the Magistrate Judge, the Plaintiff's response thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's response contains no basis upon which to set aside the Report. It is accordingly

ORDERED that the Report of the Magistrate Judge (10) 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 to its refiling as a civil rights lawsuit seeking only the overturning of the disciplinary case, but without prejudice as to the filing of a habeas corpus petition challenging the disciplinary case at issue in this lawsuit. In the event that this disciplinary case is overturned or otherwise expunged, the dismissal of the present lawsuit shall not prevent Brinson from seeking damages in a subsequent, separate Section 1983 civil rights lawsuit. Finally, it is

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

It is SO ORDERED.

SIGNED this 20th day of March, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE