

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

MARSHAUN LYNN ROBINSON §
v. § CIVIL ACTION NO. 6:14cv701
WILLIAM STEPHENS, ET AL. §

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

The Plaintiff Marshaun Robinson, a former prisoner of the Texas Department of Criminal Justice, Correctional Institutions Division 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 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.

Robinson raised a number of claims including excessive use of force by an officer named Elkins (including a state law claim of assault), false or improper disciplinary cases, theft of his property, inadequate investigation of his claims by prison officials, and a false accusation of assault by an officer named Oliver. An evidentiary hearing was conducted and one of the Defendants, TDCJ-CID Director William Stephens, was ordered to answer the lawsuit and has filed a motion to dismiss, to which Robinson filed a response.

After review of the pleadings, testimony, and records, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed as frivolous or for failure to state a claim upon which relief may be granted. The Magistrate Judge also recommended that Stephens' motion to dismiss be granted. Finally, the Magistrate Judge recommended that Robinson's state law claim of assault be dismissed without prejudice, with the statute of limitations tolled until 30 days after the dismissal of this lawsuit.

A copy of this Report was sent to Robinson at his last known address by regular and certified mail, but no objections have been received; 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 reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined 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. 82) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. It is further

ORDERED that the Defendant William Stephens' motion to dismiss (docket no. 76) is **GRANTED**. It is further

ORDERED that the Plaintiff's state law claim of assault is **DISMISSED WITHOUT PREJUDICE**, with the statute of limitations tolled for a period of 30 days following the date of entry of the final judgment in this action. Finally, it is

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

So Ordered and Signed

Sep 14, 2017



Ron Clark, United States District Judge