

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

DAVID BYRD §
v. § CIVIL ACTION NO. 6:14cv788
CHARLIE MARSHALL, ET AL. §

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

The Plaintiff David Byrd, an inmate 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. As Defendants, Byrd named an individual whom he called Charli Malil (subsequently identified as Charlie Marshall), Dwayne Dewberry, Thomas Killman, Thomas Green, and Jason Dorrell.

The Defendants Dewberry, Killman, and Dorrell filed a motion to dismiss on February 22, 2017. This motion was granted on July 17, 2017, and these Defendants were dismissed from the lawsuit. Meanwhile, on June 6, 2017, Marshall filed a motion to dismiss. Green was not served and has not appeared in the case.

On July 5, 2017, the Magistrate Judge issued a Report recommending that Marshall's motion to dismiss be granted. The Magistrate Judge also screened Byrd's complaint against Green pursuant to 28 U.S.C. §1915A and determined that Byrd's allegations against Green failed to state a claim upon which relief may be granted. The Magistrate Judge therefore recommended that these allegations be dismissed and that final judgment be entered in the lawsuit.

Byrd received a copy of this Report on July 12, 2017, 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 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 concerning the Defendants Charlie Marshall and Thomas Green (docket no. 51) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Defendant Charlie Marshall's motion to dismiss (docket no. 49) is **GRANTED** and the claims against Marshall are **DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Plaintiff's claims against the Defendant Thomas Green are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. It is further

ORDERED that the Clerk shall cause the docket to reflect the proper name of the lead Defendant, Charlie Marshall rather than the incorrect rendering of "Charli Malil." Finally, it is

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

So Ordered and Signed

Aug 17, 2017



Ron Clark, United States District Judge