

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

DANNY DEWAYNE SMITH §
v. § CIVIL ACTION NO. 6:15cv1164
KERRY GIBSON, ET AL. §

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

The Plaintiff Danny Smith filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Bradshaw State Jail. 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. The named Defendants are jail officers Kerry Gibson, Akeem Blackshire, and Shaniqua Daniels.

Smith complained of an alleged use of force occurring on March 18, 2015. The Defendants filed a motion for summary judgment based on exhaustion of administrative remedies, to which Smith did not respond.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the Defendants' motion for summary judgment be granted and the lawsuit dismissed with prejudice for purposes of proceeding *in forma pauperis*. A copy of this Report was sent to Smith's last known address but was returned with the notation "Refused - Unable to Forward." Because no objections have been filed, the parties are 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. 25) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Defendants’ motion for summary judgment (docket no. 22) is **GRANTED** and the above-styled civil action is **DISMISSED WITH PREJUDICE** for purposes of proceeding *in forma pauperis*. It is further

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

So **ORDERED** and **SIGNED** this 6 day of **March, 2017**.



Ron Clark, United States District Judge