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

TYLER DIVISION

RODNEY CONNALLY	§	
V.	§	CIVIL ACTION NO. 6:16cv504

RUSK COUNTY JAIL, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND DENYING MOTION FOR RELIEF FROM JUDGMENT

The Plaintiff Rodney Connally, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Rusk County 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.

Connally complained about the conditions of confinement in the Rusk County Jail, including allegations that he was constantly being exposed to asthma triggers despite being placed in a negative pressure cell. The Defendants filed a motion for summary judgment asserting that Connally failed to exhaust his administrative remedies. Connally filed a response to this motion.

After review of the pleadings and the summary judgment evidence, the Magistrate Judge issued a Report recommending that the motion for summary judgment be granted. Connally filed objections, but the Court overruled these objections and granted the motion for summary judgment on August 22, 2017. Final judgment was entered on that date.

On September 21, 2017, Connally filed a motion for relief from judgment. Because this motion was dated more than 28 days after entry of judgment, the Magistrate Judge properly construed the motion as being filed under Fed. R. Civ. P. 60(b). *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n.2 (5th Cir. 2012).

After review of the motion, the Magistrate Judge determined that Connally failed to meet any of the criteria for relief under Rule 60(b). Although Connally complained of "fraud on the court," the Magistrate Judge concluded that this claim, which Connally did not substantiate, was not proven by clear and convincing evidence and thus not sufficient to show entitlement to relief under Rule 60(b)(3). The Magistrate Judge therefore recommended that Connally's motion for relief from judgment be denied.

Connally received a copy of the Magistrate Judge's Report on November 6, 2017. Although he subsequently filed a motion for extension of time to seek *in forma pauperis* status on appeal and for extension of time to file an appellate brief, he did not file objections to the Report; 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 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. 70) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for relief from judgment (docket no. 67) is **DENIED**. Fed. R. Civ. P. 60(b).

So ORDERED and SIGNED this 12 day of December, 2017.

Ron Clark, United States District Judge

Rm Clark