

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

HERNAN CORTEZ §
v. § CIVIL ACTION NO. 6:16cv1115
JEFFREY RICHARDSON, ET AL. §

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

The Plaintiff Hernan Cortez, a 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 during his confinement in the Gregg 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. The named defendants are Warden Jeffrey Richardson, Major Vernon Mitchell, Captain Sean Marshall, Captain Brandon Stotts, and Sgt. Katrice Anthony. Of these Defendants, all except for Sgt. Anthony have previously been dismissed.

Cortez complained of an alleged use of force incident on May 4, 2015. Sgt. Anthony was ordered to answer the lawsuit and filed a motion for summary judgment, to which Cortez filed a response. After reviewing the pleadings and summary judgment evidence, including two videos of the incident, the Magistrate Judge issued a Report recommending that Sgt. Anthony's motion for summary judgment be granted and the lawsuit dismissed.

Cortez received a copy of this Report on June 7, 2019, 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 (docket no. 41) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Defendant Sgt. Anthony's motion for summary judgment (docket no. 73) is **GRANTED** and the claims against her are **DISMISSED WITH PREJUDICE**. Because Sgt. Anthony is the last remaining Defendant in the lawsuit, it is further

ORDERED that this lawsuit is **DISMISSED** in its entirety. Any and all motions which may be pending in this civil action are hereby **DENIED**.

So Ordered and Signed

Jul 17, 2019



Ron Clark, Senior District Judge