

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

JUVENAL GUEVARA	§	
v.	§	CIVIL ACTION NO. 6:17cv176
OFFICER PAUL, ET AL.	§	

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

The Plaintiff Juvenal Guevara, proceeding *pro se*, filed this 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.

After review of the pleadings, the Magistrate Judge determined that at least three of Guevara's previous lawsuits or appeals were dismissed as frivolous or for failure to state a claim, thus subjecting him to the three-strikes bar of 28 U.S.C. §1915(g). The Magistrate Judge therefore recommended that Guevara's application for leave to proceed *in forma pauperis* be denied and that his lawsuit be dismissed.

Guevara received a copy of the Magistrate Judge's Report but filed no objections thereto. He has filed two motions for extensions of time in which to pay the full \$400.00 filing fee, both of which were granted, but he has not done so. Accordingly, Guevara he is barred from *de novo* review by the District Judge of the Magistrate Judge's 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. 11) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Plaintiff's application for leave to proceed *in forma pauperis* (docket no. 10) is **DENIED** and the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory filing fee. It is further

ORDERED that should the Plaintiff pay the full filing fee of \$400.00 within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as though the full fee had been paid from the outset. Payment of the full filing fee will not affect a frivolousness analysis. It is further

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

So **ORDERED** and **SIGNED** February 22, 2019.



Ron Clark, Senior District Judge