

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

WESLEY SHORT §
v. § CIVIL ACTION NO. 9:09cv214
ROBERT ALLEN BYRD, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Plaintiff Wesley Short, 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.

Short was ordered to file a short and plain statement of his claims, as required by Rule 8, Fed. R. Civ. P., but failed to do so. Consequently, his lawsuit was dismissed without prejudice on June 8, 2010, for failure to prosecute or to obey an order of the Court, with the statute of limitations suspended for a period of 60 days following the entry of final judgment. That same day, Short filed a motion for summary judgment, in which he says that he is seeking relief from “the judgment and report and adopting report and recommendation of the United States Magistrate Judge.” This motion also did not present a short and plain statement of Short’s claims; instead, Short explained that he only has access to legal materials three times a week, that he has been wrongly identified as a member of a security threat group, and that he is not a “Patriot Act terrorist,” as shown by the fact that he interviewed for a job at a nuclear power plant in 2001.

After review of the motion, the Magistrate Judge issued a Report on September 12, 2010, recommending that Short’s motion for summary judgment be denied. Short received a copy of this

motion on September 17, 2010, but has filed no objections thereto; instead, on September 30, 2010, he filed a motion for relief from judgment, and a motion for a protective order.

In his motion for relief from judgment, Short complains that he has no access to counsel, state actors are obligated to protect him from harm, and the defendant Robert Allen Byrd, a prisoner, is a “Patriot Act terrorist,” extortionist, and escape risk. He talks about “federal submissions” for life endangerment complaints and talks about the crimes committed by Byrd, and mentions an “electronic surveillance tracking device warrant.” None of Short’s allegations show any basis for setting aside the Report of the Magistrate Judge if construed as objections, nor do they show any basis upon which to grant relief from judgment under Rule 60, Fed. R. Civ. P.

In his motion for a protective order, Short again refers to “electronic surveillance tracking device warrants” and says that he has been wrongly identified as a member of a security threat group. He says that he has lost 20 pounds due to stress resulting from some type of retaliation, and says that he is “suicidal over missing persons and no access for attorney to survive.” For relief in this motion, Short asks for “special review under rights of crime victims, chap. 56.” He says that someone “did astounding good job on condemning previous assailant horrible crimes,” and adds “three way checkmate under blood is thicker than water.” This motion also shows no basis for setting aside the Magistrate Judge’s Report, if construed as objections, and provides no basis for granting a protective order or any other type of relief.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Plaintiff’s motions filed subsequent to that Report. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s motions, if construed as objections, are without merit. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff’s motion for summary judgment (docket no. 26) is hereby DENIED. It is further

ORDERED that the Plaintiff's motion for relief from judgment (docket no. 28) and motion for a protective order (docket no. 29) are hereby DENIED.

So **ORDERED** and **SIGNED** this 7 day of **October, 2010**.

A handwritten signature in black ink that reads "Ron Clark". The signature is written in a cursive, slightly slanted style.

Ron Clark, United States District Judge