

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

ALVINO L. MENDOZA, JR. §
VS. § CIVIL ACTION NO. 9:13cv274
ASSISTANT WARDEN BUTCHER, ET AL. §

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Alvino L. Mendoza, Jr., an inmate at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought the above-styled lawsuit against prison officials.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the action be dismissed for failing to state a claim upon which relief may be granted.

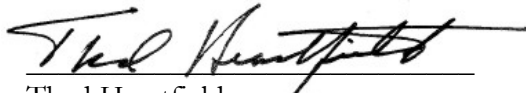
The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. For the reasons set forth in the Report, plaintiff's complaint fails to state a claim upon which relief may be granted. Additionally, to the extent plaintiff's complaint may be interpreted as asserting a malicious prosecution claim because the disciplinary charge was based on alleged false accusations, plaintiff's claim is also without merit. There is no constitutional claim based on the tort of malicious prosecution for a prison disciplinary case. *See Williams v. Dretke*, 306 F. App'x 164, 2009 WL 62223 (5th Cir. 2009). Accordingly, plaintiff's claim is frivolous and fails to state a claim upon which relief may be granted.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this the **4** day of **March, 2016**.



Thad Heartfield
United States District Judge