

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

CHARLIE FLENTROY §
VS. § CIVIL ACTION NO. 9:13cv296
RICK THALER, ET AL. §

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

Plaintiff Charlie Flentroy, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled civil rights lawsuit pursuant to 42 U.S.C. § 1983 against Rick Thaler, Brad Livingston, Nancy Mitchell and Ruth Brouwer.

The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this Court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The Magistrate Judge recommends the lawsuit be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

Plaintiff contends that this court's dismissal of *Flentroy v. Lamb*, No. 9:11cv21, should not count as a strike for the purposes of Section 1915(g). However, the United States Court of Appeals for the Fifth Circuit previously held that the dismissal of *Flentroy v. Lamb* counted as a strike. *See Flentroy v. Lamb*, 467 F.App'x 291, 292 (5th Cir. 2012). In addition, the Magistrate Judge correctly concluded that plaintiff's allegations did not demonstrate he was in imminent danger of serious physical injury on the date he filed his complaint. While plaintiff states he experienced delays in receiving medical care on several occasions, his allegations show that in each instance medical care

was eventually provided. Moreover, the last occasion on which plaintiff states medical care was delayed was April 2, 2013, more than five months prior to the date on which his complaint was filed.

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** as the opinion of the court. A final judgment shall be entered in accordance with the recommendation of the Magistrate Judge.

So **ORDERED** and **SIGNED** this **5** day of **March, 2014**.



Ron Clark, United States District Judge