

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

LUFKIN DIVISION

JOE PARKER §
VS. § CIVIL ACTION NO. 9:15-CV-125
JUAN A. TORRES, ET AL. §

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

Plaintiff Joe Parker, a prisoner confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Juan A. Torres and Billy J. Reeves.

The court ordered that this matter be referred 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 dismissing the action pursuant to Federal Rule of Civil Procedure 12(b)(6).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted 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 the objections are without merit. Plaintiff objects to the Magistrate Judge's finding that his excessive force claim was unexhausted. On November 30, 2015, plaintiff filed an amended complaint raising a new claim that he had been assaulted on October 23, 2015. Plaintiff subsequently submitted copies

of his grievances related to the incident, which reflect that he did not receive a ruling on his Step 2 grievance until December 3, 2015. Therefore, the Magistrate Judge correctly found that plaintiff's excessive force claim was unexhausted at the time he raised the claim in his amended pleading.

ORDER

Accordingly, plaintiff's objections (document no. 41) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 39) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So **ORDERED** and **SIGNED** this **2** day of **August, 2017**.



Ron Clark, United States District Judge