

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

MASON JAMES §
VS. § CIVIL ACTION NO. 9:17cv167
RICHARD L. FANK, ET AL. §

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

Plaintiff Mason James, an inmate at the Eastham Unit, proceeding *pro se*, brought the above-styled lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed as barred by 28 U.S.C. § 1915(g).

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).

Plaintiff asserts in his objections that he was in imminent danger of serious physical injury at the time he filed the complaint. After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff complains of allegedly being sexually assaulted during a pat-search which occurred more than a year before he filed the complaint. The factual allegations set forth in plaintiff's complaint do not demonstrate that he was in "imminent danger of serious physical injury" at the time he filed the complaint. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Accordingly, plaintiff is barred from proceeding on an *in forma pauperis* basis. *Id.*

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.

So Ordered and Signed

Jan 11, 2018

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

Ron Clark, United States District Judge