

Having another inmate prepare those documents does not relieve plaintiff of his responsibility or allow him to shift it to the shoulders of someone else.

Plaintiff states that, if the Court's analysis of his claims against defendants BERGER and GING are correct, he wishes to dismiss his claims against them. Plaintiff also states that he is suing defendant THALER for injunctive relief and monetary damages and that "[i]f the Honorable Honor disagrees to this then, Plaintiff wishes to dismiss defendant Rick Thaller [sic] from lawsuit."

Plaintiff goes on to say he is not suing for return of his lost goodtime or to have disciplinary case overturned. The remaining defendants would be the FULLER, the disciplinary hearing officer, and VICK, whom plaintiff says utilized unnecessary and excessive force.

The relief plaintiff requests is monetary relief and injunctive relief forbidding TDCJ from finding inmates guilty based solely on the verbal and written testimony of the officers. An award of monetary relief against defendant VICK would inevitably cast into doubt the validity of plaintiff's disciplinary hearing and its result and falls squarely within the ambit of *Edwards v. Balisock*. 520 U.S. 641, 117 S.Ct. 1584, 1589, 137 L.Ed.2d 906 (1997).

As to plaintiff's request for injunctive relief forbidding TDCJ from finding inmates guilty based solely upon the verbal and written testimony of officers, it is settled law that federal courts do not review the sufficiency of evidence at a disciplinary hearing, and sufficient support for a finding of guilt is provided by "some facts" or "any evidence at all." *Gibbs v. King*, 779 F.2d 1040, 1044 (5th Cir. 1986), *cert. denied*, 476 U.S. 1117, 106 S.Ct. 1975, 90 L.Ed.2d 659 (1986); *Smith v. Rabalais*, 659 F.2d 539, 545 (5th Cir. 1981), *cert. denied*, 455 U.S. 992, 102 S.Ct. 1619, 71 L.Ed.2d 853 (1982). Plaintiff's claim in this respect lacks an arguable basis in law and is frivolous. *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the objections filed by the plaintiff.

The Court is of the opinion that plaintiff's objections should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court, as supplemented herein

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge, as supplemented herein

IT IS THEREFORE ORDERED that the Civil Rights Complaint by ROBERTO BRISENO is DISMISSED WITH PREJUDICE AS FRIVOLOUS, AS FRIVOLOUS UNTIL THE *HECK* CONDITIONS HAVE BEEN MET, AND FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

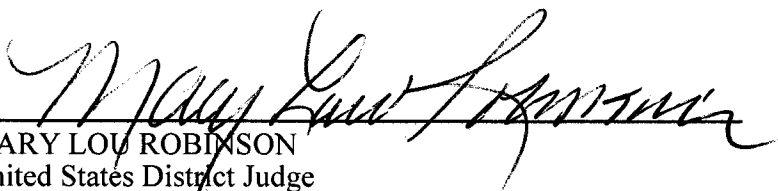
LET JUDGMENT BE ENTERED ACCORDINGLY.

Any pending motions are DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

It is SO ORDERED.

Signed this the 31st day of October, 2012.


MARY LOU ROBINSON
United States District Judge