

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARVIN WADDLETON, III,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. C-10-267
	§	
NORRIS JACKSON, <i>et al</i> ,	§	
	§	
Defendants.	§	

**ORDER ADOPTING
MEMORANDA AND RECOMMENDATIONS**

Pending before the Court is “Defendants’ Brisher and Trevino’s Motion for Summary Judgment” (D.E. 69). On March 23, 2012, United States Magistrate Judge Brian L. Owsley issued a Memorandum and Recommendation (D.E. 72), recommending that Defendants’ Motion for Summary Judgment be granted. Plaintiff filed his Objections (D.E. 77) untimely on April 16, 2012. Also pending before the Court is Plaintiff’s “Motion for Relief from a Judgment-Order” (D.E. 58). On March 29, 2012, United States Magistrate Judge Brian L. Owsley issued a Memorandum and Recommendation (D.E. 74), recommending that Plaintiff’s Motion be denied. Plaintiff filed his Objections (D.E. 78) untimely on April 18, 2012. For the reasons set forth below, the Court adopts the Memoranda and Recommendations.

Defendants Brisher and Trevino, who are both TDCJ employees, seek summary judgment in both their official and individual capacities on the basis of Eleventh Amendment immunity and qualified immunity as state agents who presided over Plaintiff’s grievances. Plaintiff’s untimely objections fail to demonstrate how these

Defendants were personally involved in policy-making regarding strip searches, in issuing orders for strip searches, or in executing those orders. None of Plaintiff's objections address the legal and factual standards that he is required to meet in order to overcome the immunities pled. Plaintiff's objections stated in D.E. 77 are **OVERRULED**.

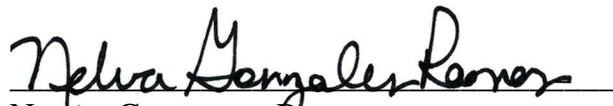
In his Motion for Relief from a Judgment-Order (D.E. 58), Plaintiff seeks damages and injunctive relief based upon the Fifth Circuit's decision in this case that his Fourth Amendment claim states a claim upon which relief can be granted. The Magistrate Judge's Memorandum and Recommendation (D.E. 74) rejects those claims. In his untimely objections (D.E. 78), Plaintiff reiterates his claim that he is now entitled to judgment based upon the Fifth Circuit's decision.

Plaintiff fundamentally misunderstands the Fifth Circuit's ruling. When the Fifth Circuit "accepted the Plaintiff's allegations as true," that was merely an exercise in the standard of review—hypothetically deciding whether, *if proven* to be true (without consideration of potential defenses), the facts would be sufficient to warrant relief such that all parties must be put to their proof. It is not a determination that the allegations are *actually* true. The Fifth Circuit decision does not preclude the Defendants from presenting any defense they may have that the factual allegations are not actually true or are not determinative because of some other defense, right, or privilege. Thus there is no fact finding that is entitled to *res judicata*, *collateral estoppel*, law of the case, or other procedural bar to trial of the factual matters. The only thing that the Fifth Circuit decided was that Plaintiff was entitled to proceed with trial on the Fourth Amendment claim (and

only the Fourth Amendment claim). Plaintiff's objections stated in D.E. 78 are **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memoranda and Recommendations, as well as Plaintiff's Objections, and all other relevant documents in the record, and having made a *de novo* disposition of the portions of the Magistrate Judge's Memoranda and Recommendations to which objections were specifically directed, the Court **OVERRULES** Plaintiff's Objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Defendants' Motion for Summary Judgment (D.E. 69) is **GRANTED** and the claims made against Defendants V.L. Brisher and Barbara Trevino are **DISMISSED WITH PREJUDICE**. Plaintiff's "Motion for Relief from a Judgment-Order" (D.E. 58) is in all things **DENIED**.

ORDERED this 23rd day of April, 2012.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE