

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

DARRON MORGAN,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. C-11-124
	§	
TDCJ MCCONNELL UNIT, <i>et al</i> ,	§	
	§	
Defendants.	§	

**ORDER ADOPTING  
MEMORANDUM AND RECOMMENDATION AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

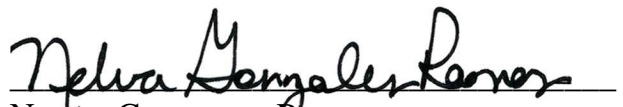
Pending before the Court is Defendant's Motion for Summary Judgment (D.E. 52). On March 28, 2012, United States Magistrate Judge B. Janice Ellington issued a Memorandum and Recommendation (D.E. 61), recommending that Defendant's Motion for Summary Judgment be granted. Plaintiff filed his Objection (D.E. 64) on April 12, 2012.

The Memorandum and Recommendation recommends granting the Defendant's motion on two grounds: (1) Plaintiff's failure to exhaust administrative remedies; and (2) Defendant's qualified immunity defense. With respect to the failure to exhaust claim, the Memorandum notes that Plaintiff did not file a grievance against Defendant Maximilliano Herrera or Defendant William Burgin according to the copies of grievances provided to the Court. The records affidavit indicated that one additional grievance had been filed, but that copies were not provided to the Court because the file has been misplaced. Plaintiff's Objection states that Plaintiff filed a grievance as indicated in an affidavit filed

with his response. The Plaintiff still has not established that he filed an appropriate grievance against these Defendants on the grounds alleged in his Complaint. Moreover, by failing to address the second recommended holding on the defense of qualified immunity, Plaintiff would not be entitled to a denial of summary judgment even if he had supplied adequate proof of exhaustion of administrative remedies.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Petitioner'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 Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Petitioner's Objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Respondent's Motion for Summary Judgment (D.E. 52) is **GRANTED** and this action is **DISMISSED WITH PREJUDICE**.

ORDERED this 4th day of May, 2012.

  
NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE