

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2012 DEC 19 PM 4: 27

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Ronald I. Holmes,)
)
Plaintiff,)
)
v.)
)
Andrew Pallito, Commissioner,)
Vermont Department of Corrections;)
Carl Davis, Superintendent, Northern)
State Correctional Facility; Mike)
Charbonneau; CO I Prue,)
)
Defendants.)

Case No. 5:12-cv-183

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 14, 15)

This matter came before the court for a review of the Magistrate Judge's November 28, 2012 Report and Recommendation ("R & R"). Defendants, who are officials at the Vermont Department of Corrections ("DOC"), have moved to dismiss Plaintiff Ronald Holmes's retaliation claims, in which he alleges that he was subjected to excessive force because of the racism and prejudice claims and grievances he asserted while incarcerated at a Vermont state correctional facility. In his Complaint, Plaintiff seeks injunctive relief in the form of an order "protecting [him] from [DOC] retaliation" for bringing this action. (Doc. 3 at 6.) Neither party has objected to the R & R, and the deadline for doing so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings

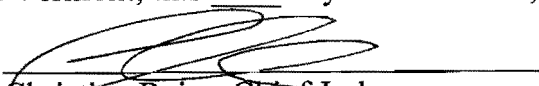
or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his seven page R & R, the Magistrate Judge carefully reviewed the factual record and the motion before the court and determined that the Defendants’ Motion to Dismiss should be granted with regard to Plaintiff’s request for prospective injunctive relief because in light of Plaintiff’s release from prison, injunctive relief would not redress any injury Plaintiff has suffered or is likely to suffer in the future. Accordingly, the Magistrate Judge recommended that Plaintiff’s claims be denied as moot. The Magistrate Judge also recommended the court deny Plaintiff’s request for counsel on mootness grounds. Finally, the Magistrate Judge found that leave to amend should be granted because Plaintiff “may be able to establish this court’s jurisdiction over his claims if he asks for a proper remedy[.]” (Doc. 15 at 6.)

The court agrees with the Magistrate Judge’s conclusions. For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge’s R & R as the court’s Order and Opinion, and GRANTS Defendants’ Motion to Dismiss. If Mr. Holmes elects to file an Amended Complaint, he must do so within 30 days of this Order. Failure to file a timely Amended Complaint will result in the dismissal of this case.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 19th day of December, 2012.


Christina Reiss, Chief Judge
United States District Court