

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAY GREER,

Plaintiff,

V.

PATRICK GLEBE, et al.,

Defendants.

CASE NO. C14-5657BHS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”)

of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 64), and

Plaintiff Jay Greer's ("Greer") objections to the R&R (Dkt. 65).

On November 3, 2016, Judge Creatura issued the R&R recommending that the

Court grant Defendants' motion for summary judgment because Greer has failed to

submit evidence to establish his claims. Dkt. 64. On November 11, 2016, Greer filed

objections. Dkt. 65. On November 11, 2016, Defendants responded. Dkt. 66.

The district judge must determine de novo any part of the magistrate judge's

disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Greer raises three issues in his objections. First, Greer contends that
4 Defendants violated a prison policy requiring intervention when an official has a “mere
5 suspicion” that an inmate is in danger. Dkt. 65 at 1–2. Even if such a policy exists, an
6 official’s violation of the policy does not establish a constitutional violation. *Sandin v.*
7 *Conner*, 515 U.S. 472, 481–82 (1995) (a “prison regulation [is] primarily designed to
8 guide correctional officials in the administration of a prison” and is “not designed to
9 confer rights on inmates . . .”). While Greer may have some recourse for violation of a
10 policy, violation of this alleged policy does not rise to a violation of Greer’s Eighth
11 Amendment rights.

12 Second, Greer objects to Judge Creatura’s conclusion that Greer failed to submit
13 admissible evidence on certain issues. Dkt. 65 at 2. Greer was put on notice that “[a]ny
14 affidavits or declarations submitted must be signed under penalty of perjury.” Dkt. 56 at
15 1. Greer’s allegations regarding his conversation with Defendant Ken Erb were not
16 submitted under penalty of perjury and, therefore, are not admissible evidence. While
17 Greer did not have to record the conversation, he was obligated to attest to his version of
18 the conversation under penalty of perjury, which he did not do. Thus, the Court adopts
19 Judge Creatura’s conclusion on this issue.

20 Finally, Greer requests that the Court seal the record to provide protection. Dkt.
21 65 at 3. Judge Creatura concluded that Greer failed to comply with the local rule and
22

1 ||| declined to consider Greer's request. Dkt. 64 at 5. The Court agrees with Judge
2 ||| Creatura. The relevant rule provides as follows:

A motion to seal a document, even if it is a stipulated motion, must include the following:

(A) a certification that the party has met and conferred with all other parties in an attempt to reach agreement on the need to file the document under seal, to minimize the amount of material filed under seal, and to explore redaction and other alternatives to filing under seal; this certification must list the date, manner, and participants of the conference;

(B) a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations where necessary.

Local Rules, W.D. Wash. LCR 5(g)(3). Greer has not filed a motion in compliance with the local rule, and the Court will not seal the record based on statements in requests in other documents.

Therefore, the Court having considered the R&R, Greer's objections, and the remaining record, does hereby find and order as follows:

- (1) The R&R is **ADOPTED**;
- (2) Defendants' motion for summary judgment is **GRANTED**;
- (3) The Clerk shall enter **JUDGMENT** for Defendants and close this case; and
- (4) Greer's *in forma pauperis* status is **REVOKE**D for purposes of appeal.

Dated this 18th day of January, 2017.



BENJAMIN H. SETTLE
United States District Judge