

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TONY GIVENS,

Plaintiff,

v.

CIVIL ACTION NO. 1:10CV140
(Judge Keeley)

WEST VIRGINIA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. 66)

The pro se plaintiff, Tony Givens ("Givens"), filed this action against the State of West Virginia, attempting to utilize various portions of the United States Code to attack his prosecution for drunk driving and subsequent license revocation. The Honorable John S. Kaull, United States Magistrate Judge, entered a Report and Recommendation ("R&R") concluding that the State's motion to dismiss should be granted.

Givens filed objections to the R&R. The Court, however, finds that Givens has failed to state any valid claim, and thus **ADOPTS** the R&R in its entirety and **DISMISSES** this case **WITH PREJUDICE**.

I. FACTUAL SUMMARY

As best as can be determined from the pleadings and motions of record in this case, officers from the Fairmont (West Virginia) Police Department arrested Givens for driving under the influence of alcohol twice: first, on May 17, 2009, and just weeks later, on June 7. On January 22, 2010, Givens pled guilty to the May 17 charge.

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The West Virginia Division of Motor Vehicles ("DMV") then initiated license revocation proceedings. Givens asked for and received an administrative hearing with respect to the revocation stemming from the June 7 arrest, but not with respect to the May 17 charge. Ultimately, in both cases the DMV issued final orders revoking Givens's driving privileges. He did not timely appeal those orders. Instead, he sought a writ of prohibition or mandamus against the DMV in the Circuit Court of Kanawha County (West Virginia). That court denied the writ on September 3, 2010. Givens then filed his suit in this Court on September 8.

II. ANALYSIS

The Magistrate Judge concluded that the Circuit Court's order denying a writ of prohibition conclusively bars this federal action under the Full Faith and Credit clause of the Constitution, U.S. Const. Art. IV, sec. 1, and principles of res judicata and collateral estoppel. Although Givens filed objections to the R&R, he does not address the Magistrate Judge's ultimate conclusion on this dispositive issue.

As the R&R makes clear, Givens seeks in this suit the same relief he was denied at the administrative level and in his petition to the Circuit Court, that is, reinstatement of his

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driving privileges. Although his pleadings and other filings are replete with accusations directed at the individual officers who arrested him, he did not name them as defendants to this suit. The decision of the Circuit Court clearly prohibits this Court from granting Givens the restoration of his license. Accordingly, the Court **ADOPTS** the R&R (dkt. 66), **GRANTS** the motion to dismiss filed by the State of West Virginia (dkt. 38), and **DISMISSES** this case **WITH PREJUDICE**.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to prepare a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se plaintiff via certified mail, return receipt requested.

DATED: April 5, 2011.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE