

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

JAMES TYRONE SMITH,

Plaintiff,

v.

Civil Action No. 1:16cv226
(Judge Keeley)

JANE OR JOHN DOE, HSA FCI Hazelton
Director; JAMES NOLTE, HSA-FCI Hazelton,
Supervisor of Health Services; DOE KOCH,
Ass't Commander-HAS Assist. Supervisor of
Health Services; FCI Hazelton Dental
COL JOHN DOE, Supervisor of Dental,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 21],
GRANTING DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT [DKT. NO. 13], AND DISMISSING THE CASE**

On November 28, 2016, the pro se plaintiff, James Tyrone Smith ("Smith"), filed a Bivens¹ action against multiple employees at FCI Hazelton (Dkt. No. 1), alleging that the defendants violated his Eighth Amendment rights by acting with deliberate indifference to his serious medical needs. Id. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Robert W. Trumble for initial review. On April 27, 2017, the defendants filed a motion to dismiss, or in the alternative, motion for summary judgment (Dkt. No. 13).

Magistrate Judge Trumble's Report and Recommendation ("R&R"), entered on November 8, 2017, recommended that the Court grant the defendants' motion to dismiss, or in the alternative, motion for

¹Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 390 (1971).

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summary judgment as to all defendants, and dismiss the plaintiff's complaint (Dkt. No. 21). Noting first that Smith's complaint makes no allegation against defendants Friss or Friend, the R&R recommended that these defendants be dismissed for failure to state a claim.² Id. at 7-8. It further recommended that defendants DuBois, Nolte, and Koch be dismissed because each is commissioned as a Public Health Services Officer and is therefore immune from personal liability in a Bivens action. Id. at 8-9. Next, the R&R concluded that Smith had failed to exhaust his administrative remedies with respect to his claims regarding eye and dental care. Id. at 9-12. Finally, to the extent Smith sought to bring a claim regarding care of his feet, the R&R concluded that he had failed to state a claim for deliberate indifference. Id. at 14-15.

The R&R also informed the parties of their right to file "written objections, identifying those portions of the recommendation to which objections are made, and the basis for such objections." Id. at 16. It further warned them that failure to do so may result in waiver of the right to appeal. Id. No party has filed any objections to the R&R.

When reviewing a magistrate judge's R&R, the Court must review de novo only those portions of the R&R to which an objection has

²Notably, Smith made no mention of Friss or Friend in his complaint except to name them as defendants (Dkt. No. 21 at 7).

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Because no party has objected, the Court is under no obligation to conduct a de novo review. Dellacirprete, 479 F. Supp. at 603-04. Upon Review of the R&R and the record for clear error, the Court:

1. **ADOPTS** the R&R (Dkt. No. 21);
2. **GRANTS** the defendants' motion to dismiss, or in the alternative, motion for summary judgment (Dkt. No. 13);
3. **DISMISSES** Smith's claim regarding his eyes and teeth **WITHOUT PREJUDICE** for failing to exhaust administrative remedies (Dkt. No. 1); and
4. **DISMISSES** Smith's claim regarding his feet **WITH PREJUDICE** for failure to state a claim upon which relief can be granted (Dkt. No. 1).

It is so **ORDERED**.

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The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and the pro se plaintiff, certified mail and return receipt requested, to enter a separate judgment order, and to remove this case from the Court's active docket.

DATED: February 13, 2018.

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