

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

JACK L. VIRTS,

Plaintiff,

v.

Civil Action No: 1:12-07780

DENNIS W. FOREMAN, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is plaintiff's application to proceed without prepayment of fees or costs. (Doc. No. 1). By Standing Order, this matter was referred to United States Magistrate Judge R. Clarke VanDervort for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 4). Magistrate Judge VanDervort submitted to the court his Proposed Findings and Recommendation on October 27, 2015, in which he recommended that the district court deny plaintiff's application to proceed without prepayment of fees and costs, dismiss plaintiff's complaint, and remove this matter from the court's docket. (Doc. No. 5 at 8).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. The failure to file

such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Plaintiff failed to file any objections to the Magistrate Judge's Findings and Recommendation within the prescribed period. Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court adopts the findings and recommendation contained therein.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly the court **DENIES** a certificate of appealability.


The court hereby **DENIES** plaintiff's application to proceed without prepayment of fees or costs, (Doc. No. 1), **DISMISSES**

plaintiff's complaint, (Doc. No. 2), and **DIRECTS** the Clerk to remove this case from the court's docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se.

**It is SO ORDERED** this 8th day of December, 2015.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge