

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

LEWIS MOORE, III,

Plaintiff,

v.

CIVIL ACTION NO. 1:20-00575

B. RIFE, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

By Standing Order, this action was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge Aboulhosn submitted to the court his Findings and Recommendation on October 8, 2020, in which he recommended that the district court dismiss plaintiff's complaint as follows: (1) all claims against FCI McDowell; (2) claims of unconstitutional verbal threats and harassment in violation of the Eighth Amendment; and (3) claims of retaliation in violation of the First Amendment. Magistrate Judge Aboulhosn further recommended that the court refer this matter back to him for further proceedings regarding plaintiff's claim of negligence and deliberate indifference concerning his allegation that he was locked in the kitchen cooler/freezer.

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

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

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. On November 9, 2020, plaintiff filed a letter indicating that he did not wish to prosecute this civil action at this time. See ECF No. 16. Thereafter, on September 30, 2021, he filed a motion to "set aside" the PF&R, pursuant to Federal Rule of Civil Procedure 60(b)(6), and a motion to amend his complaint, pursuant to Federal Rule of Civil Procedure 15(c). ECF No. 18.

This later filing doesn't really grapple with the PF&R. For example, Moore suggests that the magistrate judge erred in failing to take into account defendants' negligence. However, the PF&R asks that the matter be referred back to the magistrate judge to consider his negligence claim. For these reasons, the court will leave it to Magistrate Judge Aboulhosn to consider ECF No. 18.

Having reviewed the Findings and Recommendation filed by Magistrate Judge Aboulhosn, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **DISMISSES** plaintiff's complaint as follows: (1) all claims against FCI McDowell; (2) claims of unconstitutional verbal threats and harassment in violation of the Eighth Amendment; and

(3) claims of retaliation in violation of the First Amendment.

The court **REFERS** the matter back to Magistrate Judge Aboulhosn for further proceedings regarding plaintiff's claim of negligence and deliberate indifference concerning his allegation that he was locked in the kitchen cooler/freezer.

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

**IT IS SO ORDERED** this 18th day of March, 2022.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written above a horizontal line.

David A. Faber

Senior United States District Judge