

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

CHARLESTON

ROBERT BLAKE,

Plaintiff,

v.

Case No. 2:09-cv-01153

SGT. PRICE MAZE, CO I DAVID MILLER,
CO NATE KENDRICK, TRUSTEE CLERK,
COUNSELOR TIM CARLE, and
NURSE MARY ANN KENDRICK,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

On October 20, 2009, the Clerk filed a letter-form complaint which names the above-listed employees of the West Virginia Division of Corrections and states that he wanted to file a lawsuit against them "about them missin [sic; messing] with my money the way thay [sic; they] are" and "about my check been cut open by CO I David Miller." (# 1 at 1). On October 21, 2009, the Clerk's Office mailed Plaintiff a letter advising him that his letter-form complaint had been filed as a new civil action and explaining that his complaint was not filed on the proper form. The Clerk enclosed four copies of a "Complaint by a Prisoner under the Civil Rights Act, Title 42, United States Code, Section 1983," with instructions for the same, an "Application to Proceed in forma pauperis and Affidavit," an explanation of the filing fees and proceeding in forma pauperis, an "Authorization to Release Institutional Account

Information and to Pay Filing Fee" and six United States Marshal Process Receipt and Return forms. (# 2). The letter requested that Plaintiff complete the forms and return them to the Clerk's Office within 30 days.

Since that time, Plaintiff has never returned the forms sent to him and he has taken no action whatsoever to move this case forward. Plaintiff has neither paid the \$350 filing fee, nor has he filed an Application to Proceed in forma pauperis.

The undersigned proposes that the presiding District Judge **FIND** that Plaintiff has wholly failed to prosecute this civil action. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter without prejudice for failure to prosecute.

Plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable David A Faber, Senior United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(C), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have fourteen days (filing of objections) and then three days (service/mailing), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such

objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Faber.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Plaintiff.

December 2, 2009
Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge