

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

**CHARLESTON DIVISION**

ANDRÉ WILSON,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-20692

ANDREW HUDSON, CHERYL CHANDLER,  
PAUL PERRY, SGT. MILLER, MICHAEL JAROSZ  
MAJOR RHODES, JASON COLLINS,  
DAVID BALLARD, Warden, and  
JIM RUBENSTEIN, Commissioner,

Defendants.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court (1) **GRANT** the motion to dismiss filed by defendants Jim Rubenstein, David Ballard, Jason Collins, Paul Perry, and Cheryl Chandler [Docket 27] for failure to state a claim upon which relief may be granted; and (2) **REFER** the matter back to the Magistrate Judge for additional proceedings concerning the plaintiff's claims against the remaining defendants, namely Andrew Hudson, Sgt. Miller, Michael Jarosz, and Major Rhodes.

A district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C.

§ 636(b)(1)(C). This court is not, however, required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Objections to the Magistrate Judge’s proposed findings and recommendation were due on or before September 5, 2014. On September 3, 2014, the petitioner filed a document entitled “Plaintiff André Wilson’s Sworn Affidavit [sic] Concerning the Aforementioned Titled Matter.” This document—the only document filed by the petitioner after entry of the Magistrate Judge’s proposed findings and recommendation—simply reiterates the facts set forth in the petitioner’s initial complaint [Docket 2]. It does not address or respond to any of the Magistrate Judge’s substantive findings or his reasons for granting the defendants’ motion to dismiss. Indeed, the September 3 filing does not refer to or mention the Magistrate Judge’s findings at all. As such, I do not construe it as an objection to the Magistrate Judge’s proposed findings and recommendation. *See Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982) (acknowledging that de novo review may be “unnecessary . . . when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendation”).

Finding that the parties have not filed objections in this case, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendation. The court **GRANTS** the motion to dismiss filed by defendants Jim Rubenstein, David Ballard, Jason Collins, Paul Perry, and Cheryl Chandler [Docket 27] and **DISMISSES** with prejudice the plaintiff’s complaint [Docket 2]

against these five defendants. With respect to the remaining defendants, the court **REFERS** the matter back to Magistrate Judge Tinsley for further proceedings.

The court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: September 9, 2014



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE