

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ROGER D. SMITH,

Plaintiff,

v.

Civil Action No. 2:20-cv-00548

BRIAN PENICK, individually;
JOHNNY WILSON, individually;
SAMUEL PAULEY, individually;
DONALD AMES, individually and
in his official capacity as
Superintendent of MOCC;
BETSY JIVIDEN, individually
and in her official capacity as
WVDOC Commissioner; and
JOHNATHAN FRAME, individually
and in his official capacity as
Associate Superintendent of
Security at MOCC,

Defendants.

MEMORANDUM OPINION AND ORDER

This action was previously referred to Dwane L. Tinsley, United States Magistrate Judge, who has submitted his Proposed Findings and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B).

The court has reviewed the Proposed Findings and Recommendation entered by the magistrate judge on August 6, 2021. The magistrate judge recommends "that the presiding District Judge grant the defendants' Motion to Dismiss and dismiss Plaintiff's IIED claim contained in Count VI of the


Complaint as being duplicative of his claim for assault and battery contained in Count III thereof." ECF No. 21 (emphasis and citation omitted). The plaintiff, proceeding pro se, has not objected to the Proposed Findings and Recommendation.

Accordingly, it is ORDERED that:

1. The Proposed Findings and Recommendation be, and hereby is, adopted by the court, and
2. The defendants' motion to dismiss the Count VI IIED claim be, and hereby is, granted.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: September 3 2021



John T. Copenhaver, Jr.
Senior United States District Judge