

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JOHN ROBERT DEMOS,

Plaintiff,

v.

Civil Action No. 2:24-cv-00027

DONALD JOHN TRUMP,
Former U.S. President,

Defendant.

MEMORANDUM OPINION AND ORDER

On January 10, 2024, plaintiff, a Washington state prisoner proceeding pro se, and with no apparent connection to the Southern District of West Virginia, filed a complaint in this District naming former United States President Donald J. Trump as the sole defendant. ECF 2. The case was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and recommendations ("PF&R"). Judge Tinsley filed a PF&R on November 1, 2024, (ECF 5), to which neither party objected.

Plaintiff seeks monetary damages and unspecified declaratory and injunctive relief related to his allegations in his complaint that, on January 6, 2020, defendant gave his "blessing and authority to engage in rebellion against the U.S.

Government and election officials" and engaged in insurrection, rebellion, and treason during the "Wash. D.C. Capitol [riots]." PF&R at 1-2. Plaintiff alleges that this conduct shut down various branches of federal government which allegedly prevented him from "petitioning the Government for a redress of grievances" and violated his Fourteenth Amendment rights and other provisions of the United States Constitution. Id. He also filed an Application to Proceed In Forma Pauperis seeking to proceed without pre-payment of the applicable filing fee. See ECF 1.

Judge Tinsley determined that plaintiff has filed over 450 lawsuits in many federal courts around the country since 1991, and he took judicial notice that plaintiff has had pre-filing bar orders issued in various federal courts. Id. at 3.

Judge Tinsley analyzed plaintiff's filing under the Prison Litigation Reform Act of 1995 ("PLRA") and 28 U.S.C § 1915(g) and determined that plaintiff has filed at least 3 frivolous or malicious filings. He further found that plaintiff has not asserted and cannot reasonably assert that he is under imminent danger of serious physical injury under the exception to the three-strikes rule of 28 U.S.C § 1915(g). Id. at 4. He recommends that the court find that plaintiff, while incarcerated, has filed at least 3 federal civil actions that

have been dismissed as frivolous or malicious, or for failure to state a claim upon which relief can be granted, and he thus qualifies for application of the three strikes provision contained in § 1915(g). Judge Tinsley thus recommends dismissal of the civil action, without prejudice, under 28 U.S.C § 1915(g).

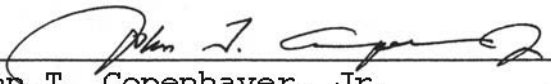
The court need not review, under a de novo or any other standard the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been raised. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b) (1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") (emphasis added). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b) (1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989). Objections in this case having been due on November 18, 2024, and none having been filed, this matter may be duly adjudicated.

Accordingly, it is ORDERED that:

1. The findings and recommendations made in the magistrate judge's Proposed Findings and Recommendations be, and hereby are, ADOPTED by the court and incorporated herein;
2. The plaintiff's Application to Proceed In Forma Pauperis be, and it hereby is, DENIED;
3. This civil action be, and it hereby is, DISMISSED without prejudice from the docket of this court.

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

ENTER: November 25, 2024



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