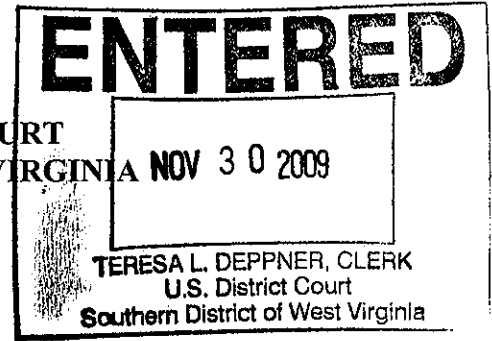


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY DIVISION



RAYMOND CHARLES BLUE,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00579

BARBARA FOX,

Defendant.

MEMORANDUM OPINION AND ORDER

Raymond Charles Blue, pro se, (Plaintiff) brought the present action [Docket 1] against Barbara Fox (Defendant) seeking relief pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Federal Agents of Federal Bureau of Narcotics*. 403 U.S. 388 (1971). On September 17, 2007, this Court referred Plaintiff's case to Magistrate Judge R. Clarke VanDervort for proposed findings of fact and a recommendation (PF&R) [Docket 2]. On October 23, 2009, Magistrate Judge VanDervort issued a PF&R [Docket 4] recommending the dismissal of Plaintiff's suit. The Magistrate Judge found that Plaintiff's claim was properly considered as one under the Eighth Amendment's right to be free from cruel and unusual punishment, and that Plaintiff alleged a violation of this right by Defendant making statements regarding Plaintiff's sexuality. The Magistrate Judge concluded that Plaintiff had failed to state a constitutional claim because Plaintiff could not show that he was "incarcerated under conditions posing a substantial risk of serious harm," nor did he allege that Defendant was aware of the risk and then disregarded it. Because Plaintiff


suffered no actual harm, concluded Magistrate Judge VanDervort, he cannot recover under a theory of possible harm.

The Court is not 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). In addition, failure to file timely objections constitutes a waiver of de novo review and the petitioner's right to appeal this Court's order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due on November 9, 2009, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge VanDervort's PF&R in its entirety [Docket 4], (2) **DISMISSES** Plaintiff's Complaint for the Violation of Civil Rights under 42 U.S.C. Section 1983 [Docket 1] with prejudice, and (3) **DIRECTS** the Clerk to remove this action from the Court's active docket. A separate judgment order will enter this day, implementing the rulings contained herein.

The Court **DIRECTS** the Clerk to send a certified copy of this *Memorandum Opinion and Order* to all counsel of record, the pro-se Plaintiff, and Magistrate Judge VanDervort.

ENTER: November 30, 2009


IRENE C. BERGER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA