

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

BECKLEY DIVISION

MATTHEW BIAFORE,

Plaintiff,

v.

CIVIL ACTION NO. 5:08-cv-00251

FCI BECKLEY,

Defendant.

**MEMORANDUM OPINION AND ORDER
ADOPTING THE PROPOSED FINDINGS AND RECOMMENDATION**

This action was initiated with the *pro-se* filing by the Plaintiff of a *Letter-Form Complaint* (Document No. 1) on April 11, 2008. By *Standing Order* (Document No. 3) entered on April 11, 2008, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.¹

On June 15, 2011, the Magistrate Judge submitted his *Proposed Findings and Recommendation* (Document No. 5) wherein he found that Plaintiff filed a letter-form complaint alleging claims that he was the “target of nearly nonstop harassment and abuse by the officers of [his prison] facility[,]” pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Petitioner requested this Court to transfer him to a regional jail or another

¹ On the same day, the Clerk’s office forwarded a letter to Plaintiff with forms on which to file his civil action, as well as an application to proceed in forma pauperis. (Document No. 2). Plaintiff did not complete and return the forms or seek to proceed without prepayment of filing fees.

prison within the Federal Bureau of Prisons. The Magistrate Judge determined that the instant case or controversy has been rendered moot by Plaintiff's release from custody and recommended that this Court dismiss Plaintiff's Complaint and remove this matter from the Court's docket.

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). Failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In the PF&R, the Magistrate Judge instructed Plaintiff to file any objection to the PF&R within seventeen days from the date of its filing. Therefore, Plaintiff's objections were due on July 5, 2011. To date, Plaintiff has not filed any objections to the Magistrate Judge's Proposed Findings and Recommendation.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that Plaintiff's *Letter-Form Complaint* (Document No. 1) be **DISMISSED**, and that this action be **REMOVED** from the Court's Docket.

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

ENTER: July 11, 2011



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA