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

BECKLEY DIVISION

ANTHONY T. HARRELSON,

Plaintiff,

V.

CIVIL ACTION NO. 5:10-cv-00216

KEVIN CANTERBERRY, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On March 3, 2010, the Plaintiff filed a *Complaint* (Document No. 1) and an *Application to Proceed Without Prepayment of Fees and Costs* (Document No. 2). On March 8, the Plaintiff filed a *Motion to Dismiss* (Document No. 7). On May 11, 2010, the Plaintiff filed a second *Motion to Dismiss* (Document No. 35).

By Standing Order (Document. No. 6) entered on March 3, 2010, 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. On December 13, 2010, the Magistrate Judge submitted Proposed Findings and Recommendation (Document No. 38) wherein it is recommended that this Court: 1) deny the Plaintiff's Application to Proceed Without Prepayment of Fees and Costs (Document No. 2); 2) deny the Plaintiff's March 8, 2010 Motion to Dismiss (Document No. 7); 3) deny the Plaintiff's May 11, 2010 Motion to Dismiss (Document No. 35); and 4) dismiss the Plaintiff's Complaint (Document No. 1).

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and*

Recommendation. 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).

Accordingly, the Court **ADOPTS** and incorporates herein the substance of the findings of

the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court

further ADOPTS the recommendation of the Magistrate Judge and ORDERS that: 1) the Plaintiff's

Application to Proceed Without Prepayment of Fees and Costs (Document No. 2) is **DENIED**; 2)

the Plaintiff's March 8, 2010 Motion to Dismiss (Document No. 7) is **DENIED**; 3) the Plaintiff's

May 11, 2010 Motion to Dismiss (Document No. 35) is **DENIED**; and 4) the Plaintiff's Complaint

(Document No. 1) is **DISMISSED**.

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:

January 3, 2011

RENE C. BERGER

UNITED STATES DISTRICT JUDGE

SOUTHERN DISTRICT OF WEST VIRGINIA

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