

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

BECKLEY DIVISION

JOSEPH LEE VANDERHART,

Plaintiff,

v.

CIVIL ACTION NO. 5:10-cv-00492

CHARLES T. FELTS, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On April 16, 2010, Plaintiff filed his Complaint (Document 2) in this matter claiming entitlement to relief pursuant to the Federal Tort Claims Act U.S.C. §§ 1346(b) and 2671, *et seq.*, and for alleged violations of his constitutional and civil rights pursuant to *Bivens v. Six Unknown Federal Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). By Standing Order (Document 6) entered on April 16, 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(b)(1)(B).

On June 9, 2011, Defendants' filed their *Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 12) along with their supportive memorandum (Document 13). On September 23, 2011, Plaintiff filed his response to Defendants' motion. (Document 19). On February 15, 2012, the Magistrate Judge submitted Proposed Findings and Recommendation ("PF&R") (Document 20), wherein it is recommended that this Court grant Defendants' Motion to Dismiss, or in the Alternative Motion for Summary Judgment, 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 Petitioner'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 addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). Objections to the PF&R in this case were due by March 5, 2012. To date, no party has filed objections.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation (Document 20), and **ORDERS** that *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 12) be **GRANTED** and Plaintiff's Complaint (Document 2) be **DISMISSED**. The Court further **ORDERS** that this matter be removed from its docket.

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

ENTER: March 6, 2012



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