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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CARRINGTON KEYS, Plaintiff	:	
	:	CIVIL ACTION NO. 3:07-337
v.	:	
	:	(JUDGE NEALON)
JEFFREY BEARD, et al., Defendants	:	(MAGISTRATE JUDGE BLEWITT)

MEMORANDUM and ORDER

On February 20, 2007, Plaintiff, an inmate formerly incarcerated at SCI-Camp Hill,[1] filed the instant civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). The Complaint alleges that Defendants confiscated Plaintiff's "Five-Percenter" religious material[2] and placed him in the Special Management Unit ("SMU") based on his religious beliefs. Id. After making a preliminary screening

[1]Plaintiff is currently incarcerated at SCI-Dallas.

[2]"The Five Percent Nation ... breaks down the population of the world into three groups: the Ten Percent, the Eighty-Five Percent, and the Five Percent." Fraise v. Terhune, 283 F.3d 506, 511-12 (3d Cir. 2002). The Ten Percent are "known as the blood suckers of the poor"and "include white people and others who propagate the myth of a nonexistent 'mystery God.'" Id. "The Eighty-Five Percent are those who are subjugated and deceived." Id. "Finally, the Five Percent are African Americans who have achieved self-knowledge. They 'know the black man's true nature and that God is within man himself.' ... The Nation of Gods and Earths teaches that [the black man's status] is commensurate with that of the Supreme being." Id. (internal citations omitted).

of the Complaint pursuant to 28 U.S.C. § 1915(e)(2), Magistrate Judge Blewitt recommended that Defendant Beard and all claims, except those under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc et. seq., and First Amendment be dismissed. (Doc. 16). On July 3, 2007, the recommendation was adopted. (Doc. 20).

Defendants filed a Motion to Dismiss the Complaint on October 23, 2007. (Doc. 30). After receiving briefs, the Magistrate Judge recommended that the motion be granted and the case be closed. (Doc. 44). In the Report, it was concluded that "Plaintiff failed to establish that the confiscation of his religious materials imposed a substantial burden on his exercise of religion ... [and] failed to state a claim under the First Amendment [and RLUIPA]." (Doc. 45). However, by Order dated May 30, 2008, the Report and Recommendation was not adopted because the parties went "beyond the pleadings in arguing the merits of the Motion to Dismiss" and, therefore, the matter was remanded with instructions to convert the Motion to Dismiss into a Motion for Summary Judgment and to afford the parties time to submit supplemental documents. Id.

Upon remand, the Magistrate Judge directed the parties to file any additional evidence. (Doc. 46). Defendants filed a statement of material facts, which Plaintiff answered, but no other materials were submitted in connection

with the Motion. (Docs. 49, 51). On September 22, 2008, the Magistrate Judge issued a Report recommending that summary judgment be granted in Defendants' favor and the case dismissed. (Doc. 54). Plaintiff filed objections on October 9, 2008. (Doc. 55). The matter is ripe for disposition and, for the reasons set forth below, the Report and Recommendation will be adopted.

Standards of Review

A. Review of a Magistrate Judge's Report and Recommendation

When objections to a Report and Recommendation have been filed under 28 U.S.C. § 636(b)(1)(C), the Court must make a *de novo* review of those portions of the report to which objections are made. Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). A *de novo* determination is not required if the objections are not specific. Goney v. Clark, 749 F.2d 5, 6-7 (3d Cir. 1984) ("providing a complete de novo determination where only a general objection to the report is offered would undermine the efficiency the magistrate system was meant to contribute to the judicial process."), citing, United States v. Raddatz, 447 U.S. 667, 100 S. Ct. 2406, 65 L. Ed. 2d 424 (1980). The Court may accept, reject, or modify, in whole or in part, the findings and recommendations contained in the report. 28 U.S.C. § 636(b)(1)(C); Local Rule 72.3. Further, the Court may, in the

exercise of sound judicial discretion, rely on the Magistrate Judge's proposed findings and recommendations. Raddatz, 447 U.S. at 676; Goney, 749 F.2d at 7.

B. Summary Judgment Standard of Review

Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c); Turner v. Schering-Plough Corp., 901 F.2d 335, 340 (3d Cir. 1990). The party moving for summary judgment bears the burden of showing the absence of a genuine issue as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once such a showing has been made, the non-moving party must offer specific facts contradicting those averred by the movant to establish a genuine issue of material fact. Lujan v. National Wildlife Federation, 497 U.S. 871, 888, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990).

Discussion

In the Report and Recommendation, the Magistrate Judge discusses the allegations made in the Complaint, specifically Plaintiff's claims that his Five-

Percenter religious materials were withheld by Defendants. (Doc. 54, pp. 6-9). The Report states that Defendants concluded the publications were racially inflammatory and a threat to security and, thus, prevented them from entering the prison. Id. Plaintiff, however, argued that they did not show how the materials were a threat. Id. The Complaint alleged that the Five-Percenter publications were previously authorized by the prison and Defendants confiscated them without affording due process. Id. Plaintiff contended that the materials were essential to the practice of his faith and its confiscation was discriminatory. Id. Further, Plaintiff asserted that he was placed in the SMU as part of a "so-called experimental research project designed to modify his behavior and to make him succumb to spiritual submission by employing brutal treatment in the program as well as mind control tactics." Id. at 8. The Report indicates that all but one of Defendants' material facts are derived directly from the Complaint and judicial notice was taken of the remaining statement of fact, namely that Five-Percenters have been labeled as a security threat group ("STG"). (Doc. 54, pp. 13-14); (Doc. 49). No objections[3] were made to these findings and, after independent review, they will be adopted in their entirety.

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[3]Plaintiff's objection to the authority of the prison to designate the Five-Percenters as an STG will be discussed in greater detail below.

Next, the Report states that Plaintiff sought injunctive relief[4] as well as compensatory and punitive damages, noting that he did not sue Defendants for monetary damages in their official capacities. (Doc. 54, p. 9). Relying on Sharp, the Magistrate Judge recommends that the RLUIPA claims be dismissed because "money damages are not permitted under RLUIPA against the Defendants in either their individual or official capacities." Id. (quoting Sharp v. Johnson, 2008 U.S. Dist. LEXIS 29360, *59-60 (W.D. Pa. 2008)). Further, the Report concludes that because Plaintiff was transferred from SCI-Camp Hill, where the alleged violations occurred, to SCI-Dallas, his claims for injunctive relief are no longer available. Id.; Sharp, 2008 U.S. Dist. LEXIS 29360 at *29-30 ("[T]he transfer of an inmate from the facility complained of moots claims for injunctive relief involving that facility."). The Magistrate Judge suggests that the only viable claim is Plaintiff's request for monetary damages against Defendants in their personal capacities for alleged violations of the First Amendment. Id.

Plaintiff did not object to these determinations; therefore, *de novo* review is not required. Regardless, after an independent review, the recommendation will be adopted. As to the request for injunctive relief, the Sharp Court relied on the

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[4]Plaintiff's preliminary injunction motions were previously denied. See (Doc. 43).

precedential opinion by the Third Circuit Court of Appeals, which held that an injunctive order could provide no relief to a prisoner-plaintiff who was no longer confined in the facility where the alleged violation occurred. Abdul-Akbar v. Watson, 4 F.3d 195, 197, 206-07 (3d Cir. 1993). The Sharp Court then considered an unpublished non-precedential opinion from the Third Circuit Court of Appeals that held monetary damages could not be awarded under RLUIPA against defendants sued in their official capacities. Sharp, 2008 U.S. Dist. LEXIS 29360, citing, Scott v. Beard, 252 Fed. Appx. 491 (3d Cir. 2007) (affirming summary judgment in favor of the defendant sued in his official capacity under RLUIPA). The conclusion that defendants are entitled to qualified immunity in a RLUIPA claim for monetary damages has been similarly adopted in the district. Scott v. Beard, 2006 U.S. Dist. LEXIS 65673, *14 (M.D. Pa. 2006) (Caputo, J.). However, although Sharp held that money damages are not available under RLUIPA where defendants are sued in their individual capacities, the Third Circuit Court of Appeals has not answered the question. Brown v. D.O.C. Pa., 265 Fed. Appx. 107, 111 (3d Cir. 2008) ("We also find it unnecessary to reach the question[] whether individuals may be liable for monetary damages under the RLUIPA.").

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof... ." U.S.

CONST. AMEND. I. "It is well established that 'convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison. Bell v. Wolfish, 441 U.S. 520, 545, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). Inmates clearly retain protections afforded by the First Amendment, ... including its directive that no law shall prohibit the free exercise of religion. O'Lone v. Shabazz, 482 U.S. 342, 348, 107 S. Ct. 2400, 96 L. Ed. 2d 282 (1987)." Thompson v. Pa. Dep't of Corr., 2006 U.S. Dist. LEXIS 95008, *7-8 (M.D. Pa. 2006) (Nealon, J.). "Constitutional rights, however, including the right to practice religion, may be reasonably restricted in order to facilitate valid penological objectives, such as deterrence of crime, rehabilitation of prisoners, and institutional security." Id. (citing Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119, 132, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977); Pell v. Procunier, 417 U.S. 817, 822-23, 94 S. Ct. 2800, 41 L. Ed. 2d 495 (1974)). RLUIPA states:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution ... even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a).

The Report also discusses the standard for a section 1983 civil rights action. (Doc. 54, pp. 14-15). "It is well established that personal liability under section 1983 cannot be imposed upon a state official based on a theory of *respondeat superior*." Id. (citing Rizzo v. Goode, 423 U.S. 362, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976)). A complaint must identify each defendants' personal involvement in the alleged violations. Id. (citing Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1998)). Here, Plaintiff claimed that each Defendant was responsible for the discriminatory banning and confiscation of his religious materials and for the treatment he received in the SMU. The Magistrate Judge concluded, however, that despite Plaintiff's opportunity to present additional proof, there is no evidence that his non Five-Percenter religious materials were withheld or that he was prevented from practicing his faith. Id. at 19. The Report states that Plaintiff did not allege how the Five-Percenter material was essential to his religion or that he was a registered Five-Percenter with the Department of Corrections. Id. The Magistrate Judge reasoned that there was a complete lack of evidence that confiscation of his Five-Percenter material imposed a substantial burden on his exercise of religion or that he was forced to choose between practicing his religion and modifying his beliefs. Id. at 19-28 (citing Sharp, 2008 U.S. Dist. LEXIS 29360). Further, Plaintiff offered no evidence to support his claim that he was placed in the SMU

due to his religious beliefs. Id. at 16. Relying on Brown, the Report states that Plaintiff "has 'not produce[d] sufficient evidence from which a jury could conclude that his religious beliefs were a substantial motivating factor in the decision to confine him in administrative custody.'" Id. at 16-23 (citing Brown v. D.O.C., 265 Fed. Appx. 107, 110 (3d Cir. 2008). The Magistrate Judge determined that Plaintiff has not offered sufficient evidence to support his First Amendment and RLUIPA claims and recommends that summary judgment be entered in favor of Defendants. In reaching this conclusion, the Magistrate Judge also held that application of the Turner factors was not necessary. (Doc. 54, pp. 24-25 n.20) (citing Fraise, 283 F.3d at 518); Turner v. Safely, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).

Plaintiff's only specific objection to the Report is that the Department of Corrections and the courts do not have the authority to decide whether the Five Percent Nation is an STG. (Doc. 55, ¶¶ 15-16). The denotation of an STG, however, is only significant under an analysis of the Turner factors, which was not made in the instant Report; therefore, this objection will be overruled. Moreover, the power of corrections officials to designate security threat groups was recognized by the United States Supreme Court in Turner, 482 U.S. 78. The Third Circuit Court of Appeals similarly acknowledged this authority and held that there

is "ample evidence that the Five Percent Nation as a group poses a threat to prison security." Fraise, 283 F.3d at 514-18 ("[W]e are satisfied that the defendants had adequate grounds for concluding that inmates belonging to the Five Percent Nation present a serious security threat."). The Fraise Court concluded that "even core members of the Five Percent Nation retain alternative avenues of practicing their religion" and that its teachings includes texts such as the Bible. Id. at 511, 520. The Court determined that "the decision to designate the Five Percent Nation as an STG was rationally related to this legitimate and neutral government objective," and that the STG policy's restrictions were rationally related to the goal of prison safety and security. Id. Accordingly, this objection will be overruled.

Plaintiff's remaining objections[5] are not specific and meritless; thus, will be denied. See Peters v. Pa. AG, 2008 U.S. Dist. LEXIS 90302 (M.D. Pa. 2008) (Jones, J.) (finding the petitioner "embark[ed] upon a course of nonsensical rambling from which no legal argument can be discerned" and overruling his objections to the magistrate judge's recommendation as frivolous). After an independent evaluation, the Magistrate Judge's findings and conclusions will be

[5]Plaintiff's nonsensical objections include unsupported allegations of fraud, "mind control," and "slavery" and refer repeatedly to the Uniform Commercial Code which has no relevance to the instant matter.

adopted in their entirety.

Conclusion

After considering the Magistrate Judge's analysis and conducting an independent review, the Report and Recommendation will be adopted: the converted Motion for Summary Judgment (Doc. 30) will be granted and the case will be closed.

Date: December 15, 2008

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CARRINGTON KEYS, Plaintiff	:	
	:	CIVIL ACTION NO. 3:07-337
v.	:	
	:	(JUDGE NEALON)
JEFFREY BEARD, et al., Defendants	:	(MAGISTRATE JUDGE BLEWITT)

ORDER

AND NOW, THIS 15th DAY OF DECEMBER, 2008, **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 54) is **ADOPTED**.

2. The converted Motion for Summary Judgment (Doc. 30) is **GRANTED**.

3. Plaintiff's Objections (Doc. 55) to the Report and Recommendation are **OVERRULED**.

4. The Clerk of Courts is directed to **CLOSE** this case.

5. Any appeal will be deemed frivolous, lacking merit, and not taken in good faith.

United States District Judge