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

FILED
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AUG 24 2007
PER
DEPUTY CLERK

CARRINGTON KEYS, Plaintiff	:	NO. 3:CV-07-338
v.	:	(JUDGE NEALON) (MAGISTRATE JUDGE BLEWITT)
DEPT. OF CORRECTIONS, ET AL., Defendants	:	

MEMORANDUM and ORDER

On February 20, 2007, Plaintiff, an inmate currently incarcerated at the SCI-Camp Hill, commenced the present civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). The complaint challenges the conditions and treatment he has received in the Special Management Unit ("SMU") of the prison, and states further that his due process rights were violated by his placement in the SMU. After preliminarily screening the case pursuant to 28 U.S.C. § 1915(e)(2), on April 20, 2007, United States Magistrate Judge Thomas M. Blewitt issued a Report and Recommendation, recommending, *inter alia*, the dismissal of the Department of Corrections and the ten (10) named Defendant supervisors, as well as the dismissal of all claims raised in the complaint except the Eighth Amendment claims. (Doc. 8). By Order dated July 11, 2007, the court adopted the report and Recommendation, and permitted Plaintiff to file an amended complaint. (Doc. 12). The Order directed that the amended

complaint should address the personal involvement of the remaining Defendants with respect to his excessive force and denial of medical care claims under the Eight Amendment and Section 504 claims, and Plaintiff was directed to file it within twenty (20) days. On August 6, 2007, Plaintiff filed his amended complaint with an accompanying memorandum of law. (Docs. 14-15). On August 15, 2007, Magistrate Judge Blewitt filed a Report and Recommendation in this matter, recommending that the amended complaint be dismissed in its entirety under 28 U.S.C. §1915(e)(2)(B)(ii), concluding that it failed to allege personal involvement of the remaining Defendants and attempted to re-litigate claims previously dismissed. (Doc. 17). Plaintiff filed Objection to the Report and Recommendation on August 23, 2007. (Doc. 18). The matter is now ripe for disposition and, for the reasons set forth below, the court will adopt the Report and Recommendation and dismiss the amended complaint.

Discussion

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* consideration of those portions of the report to which there have been objects. *See* Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In so doing, 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); Local Rule 72.31. Further, the court may, in the exercise of sound judicial discretion, rely on the Magistrate Judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 676 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

In his objections, Plaintiff reiterates his earlier arguments as to his SMU placement constituting an atypical and significant hardship. Specifically, he attempts to revive the claim previously dismissed by asserting that it was error to dismiss such claims before permitting the factual record to be developed. As noted by the Magistrate Judge, this claim had previously been dismissed by Order dated July 13, 2007. (Doc. 12). While permitting Plaintiff additional time to file an amended complaint, that Order set specific parameters, directing Plaintiff to file an "amended complaint addressing the personal involvement of the [remaining] Defendants with respect to his remaining Eighth Amendment and Section 504 claims only." Id. Consequently, his present attempt to relitigate the SMU placement will be dismissed.

Additionally, Plaintiff objects to the dismissal of the action without leave to amend the complaint. As noted above, he was permitted to file an amended complaint, and did so on August 6, 2007. (Doc. 14). Plaintiff correctly observes that Rule 15(a) provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served," and that such a response

has not yet been filed. Plaintiff appears to contend that Rule 15(a) allows unlimited subsequent and successive amendments prior to the filing of a responsive pleading. Such an interpretation is contrary to the language of the statute, inasmuch as it specifically states that "[a] party may amend the party's pleading *once* as a matter of course . . ." *See* FRCP 15(a) (emphasis added). Such amendment having previously been permitted, he is not presently entitled to further amend his pleading. Moreover, to the extent that the amended complaint failed to comply with the parameters outlined in the July 13, 2007 Order, it will also be dismissed under Rule 41(b).

Conclusion

The court finds the Report and Recommendation well-reasoned and legally sound. Consequently, it will be adopted. An appropriate order follows.

Date: August 24, 2007

s/ William J. Nealon
United States District Judge

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CARRINGTON KEYS,	:	
Plaintiff	:	NO. 3:CV-07-338
	:	
v.	:	(JUDGE NEALON)
	:	(MAGISTRATE JUDGE BLEWITT)
JEFFREY BEARD, ET AL.,	:	
Defendants	:	

ORDER

ACCORDINGLY, THIS 24th DAY OF AUGUST, 2007, IT IS HEREBY ORDERED THAT:

1. The motion for leave to proceed *in forma pauperis* (Doc. 3) is GRANTED for the sole purposes of this order.

2. The Magistrate Judge's Report and Recommendation (Doc. 17) is ADOPTED.

3. The amended complaint (Doc. 14) is DISMISSED.

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

s/ William J. Nealon
United States District Judge