

administered by Respondent. (Doc. 20; *see also* Doc. 2). In his recommendation, Judge Hodge found that Respondent became aware of Petitioner's regularly dislocating his right shoulder as early as June 8, 2004; and thereafter sent him to Pheobe Putney Memorial Hospital for care and treatment. (Doc. 34). Judge Hodge further found that hospital physicians x-rayed Petitioner's right shoulder, noted its frequent dislocation, and on at least two separate occasions performed successful shoulder reduction. *Id.* In the approximately three weeks between the shoulder reductions, Judge Hodge found that Respondent provided Petitioner with two different pain medications. *Id.*

On June 29, 2004, the Magistrate Judge found, Petitioner complained of lower back pain, after which Respondent was seen by a nurse. *Id.* Judge Hodge further found that on July 1, 2004, Respondent ordered additional x-rays, prescribed pain, anti-inflammatory, and muscle relaxer medications, and placed Petitioner on a ten (10) day heat pack treatment course. *Id.* On September 7, 2004, Judge Hodge found that Respondent again ordered x-rays of Petitioner's lower back based on Petitioner's pain complaints. *Id.*

Judge Hodge noted that Petitioner "stated that he was never provided with follow-up care or instructions following the June 2004 shoulder reductions, and was required to wear a shoulder immobilizer between June 26, 2004 and September 1, 2004, which [Petitioner] alleges caused muscle deterioration." *Id.* Judge Hodge further noted Plaintiff's further allegations "that he filed multiple grievances and complaints seeking treatment for his ongoing pain, but that Dr. Spain refused to properly treat and diagnose his conditions." *Id.*

In conclusion, Judge Hodge found that Petitioner's medical records establish Respondent's consistent, regular treatment of Petitioner's various complaints during the time period in question. *Id.* Relying on Estelle v. Gamble, 429 U.S. 97, 106 (1976), Howell v. Evans, 922 F.2d 712, 720 (11th Cir. 1991), *rev'd. on other grounds*, 12 F.3d 190 (1994), and Harris v. Thigpen, 941 F.2d 1495, 1505 (11th Cir.1991), Judge Hodge found that neither mere incidents of negligence nor simple differences in medical opinion between a prisoner/patient and a physician support a claim for cruel and unusual punishment. Judge Hodge further found that Petitioner "has offered nothing to rebut [Respondent's] showing that [Petitioner] received regular

medical care and attention for his shoulder and back conditions and complaints, and has failed to establish that [Respondent] acted with deliberate indifference to [Petitioner's] serious medical needs." *Id.*

In his objection, Petitioner reiterates claims and arguments made in his response to the instant motion for summary judgment, which the Magistrate Judge considered in connection with the Report and Recommendation at issue. (*See* Doc. 35, *c.f.*, Doc. 22). In his objection, as in his response to Respondent's motion for summary judgment, Petitioner offers no factual evidence in support of his claims; only mere speculation, which is insufficient to support a finding that Respondent acted with deliberate indifference. *Id.*

Upon full review and consideration upon the entire record, and taking into consideration the objections of Petitioner, the Court finds that said Report and Recommendation (Doc. 34) should be, and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings and reasons set out therein, together with the findings made and conclusions reached herein. Accordingly, Respondent's Motion for Summary Judgment (Doc. 20) is **GRANTED**; and Respondent's Motion to Dismiss (Doc. 28) is **DENIED**.

SO ORDERED, this 29th day of March, 2006.

/s/W. Louis Sands
W. LOUIS SANDS, CHIEF JUDGE
UNITED STATES DISTRICT COURT