

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAQUILLE GRAY

CIVIL ACTION

VERSUS

NUMBER 15-5531

MARLIN N. GUSMAN, ET AL.

SECTION "E"(5)
Flag Section "C"

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge recommending that the Court dismiss the *in forma pauperis* action by pro se plaintiff Shaquille Gray as frivolous under § 1915(e)(2)(B)(i). *See* Rec. Doc. 8. Plaintiff alleges that he “has suffered chest pains, so[re] throat and headaches” in Orleans Parish Prison and that defendants “failed to help pass out cleaning supplies and medical attention.” *See* Rec. Doc. 3 at 4–5.

The Magistrate Judge reviewed the complaint to determine if it has an arguable basis in law or fact or fails to state a claim upon which relief can be granted. *See* Rec. Doc. 8 at 1. The Magistrate Judge concluded that there were at least two independent grounds for dismissing plaintiff’s complaint as frivolous. *See id.* First, the Magistrate Judge concluded that plaintiff’s complaint could not support a claim against any of the defendants either in their official or individual capacity. *See id.* at 2–3. The Magistrate Judge noted that the complaint “contains no allegations whatsoever regarding [the named defendants’] involvement in the matters of which he complains,” nor does it allege that there was a policy or custom at Orleans Parish Prison that caused his alleged harm. *See id.* Second, the Magistrate Judge concluded that the allegations of plaintiff “fall far short of establishing the objective and subjective components . . . needed to prevail on a conditions-of-confinement claim,” noting that it appears “at worst” that plaintiff suffered *de minimis* injuries insufficient to justify an award of damages under 42 U.S.C. § 1997e(e). *See id.* at

3–5. Furthermore, plaintiff’s transfer from Orleans Parish Prison to the Louisiana State Penitentiary in Angola, Louisiana, means his request for injunctive relief has been rendered moot. *See id.* at 5. As such, the Magistrate Judge has recommended that the Court dismiss plaintiff’s suit with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).

The Magistrate Judge’s Report and Recommendation notified the parties that they had fourteen days to timely object in writing. *See* Rec. Doc. 8 at 6. Plaintiff timely filed a two-page written objection, but stated only that “Plaintiff object’s to Defendant’s answer’s” and asking that the Court “Find’s that plaintiff motion is not frivolous or moot.” *See* Rec. Doc. 10.

The Court, having considered the complaint, the record, the applicable law, the Magistrate Judge’s Report and Recommendation, and Plaintiff’s objection to the Magistrate Judge’s Report and Recommendation, hereby approves the Magistrate Judge’s Report and Recommendation and adopts it as its opinion herein. Affording “all reasonable inferences which can be drawn from” pro se plaintiff Gray’s complaint, the Court finds no reason to disturb the opinion of the Magistrate Judge. *See In re Tex. Pig Stands, Inc.*, 610 F.3d 937, 941 n.4 (5th Cir. 2010) (regarding manner in which court should interpret the filings of pro se litigants). The plaintiff was afforded the opportunity to state why his complaint should not be dismissed as frivolous, but provided no additional detail.

Accordingly,

IT IS ORDERED that Plaintiff’s suit is DISMISSED with prejudice pursuant to 28 U.S.C. §1915(e)(2)(B)(i) and (ii).

New Orleans, Louisiana, this 19th day of January, 2016.



SUSIE MORGAN
UNITED STATES DISTRICT JUDGE