

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

RANDY BROOKS,

Plaintiff,

v.

**2:06 CV 84
(Maxwell)**

**DR. WATERS, MARTHA BLANCO,
LEWIS BRESKOACH, LT. R. TRYBUS,
CHRISTINE SHAFFER, SUSAN MCCLINTOCK,**

Defendants.

ORDER

It will be recalled that on August 28, 2006, *pro se* Plaintiff Randy Brooks, initiated the above-styled civil action by filing a civil rights complaint against the above-named Defendants. The Plaintiff's Complaint alleges that the Defendants were deliberately indifferent to his serious medical needs and that the Defendants used excessive force against him.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.02 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. §§ 1915(e)(2) and 1915(A).

After conducting an initial screening and review, Magistrate Judge Kaull determined that summary dismissal of the Complaint was not warranted and, by Order entered October 19, 2006, directed the Defendants to file an answer.

On January 30, 2007, the United States filed a Motion To Dismiss, Or In The Alternative Motion For Summary Judgment. A Roseboro Notice was issued by Magistrate Judge Kaull on February 7, 2007, and the Plaintiff's Opposition Response to

the Defendant's Motion To Dismiss Or In The Alternative, Motion For Summary Judgment was filed on March 7, 2007.

Thereafter, the Plaintiff filed a Motion For Preliminary injunction on April 25, 2007. In said Motion, the Plaintiff sought an injunction ordering the Defendants to release him from the Special Housing Unit ("SHU") where he alleges he was placed on April 17, 2007, by Defendant Lt. R. Trybus in retaliation for filing the instant civil action.

On May 2, 2007, Magistrate Judge Kaull issued an Opinion/Report And Recommendation On Plaintiff's Motion For Injunctive Relief wherein he recommended that the Petitioner's Motion For Preliminary Injunction be denied in light of the fact that the Plaintiff had failed to either assert or establish that he would suffer irreparable harm if an injunction did not issue.

In his Report And Recommendation, Magistrate Judge Kaull provided the parties with ten days from the date of said Opinion/Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

On May 11, 2007, the Plaintiff filed an Objection To The Opinion Report And Recommendation Filed By The Court On Injunctive Relief May 2, 2007.

Thereafter, on May 23, 2007, the Defendants filed a Motion To Dismiss As Moot, wherein they assert that the Plaintiff's Motion For Preliminary Injunction should be denied as moot in light of the fact that the Plaintiff was released from the SHU on May 1, 2007.

Upon an independent *de novo* consideration of all matters now before the Court, it

appears to the Court that the issues raised by the Plaintiff in his Motion For Preliminary Injunction were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Furthermore, upon consideration of the Plaintiff's Objection to said Report And Recommendation, it appears to the Court that the Plaintiff has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Additionally, as noted by the Defendants in their Motion To Dismiss As Moot, the Plaintiff was released from the SHU on May 1, 2007. Release from the SHU was, of course, the relief sought by the Plaintiff in his Motion For Preliminary Injunction. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court with regard to the Plaintiff's Motion For Preliminary Injunction. Accordingly, it is

ORDERED that the Opinion/Report And Recommendation On Plaintiff's Motion For Injunctive Relief entered by United States Magistrate Judge John S. Kaull on May 2, 2007 (Docket No. 38), be, and the same is hereby, **ACCEPTED** in whole. It is further

ORDERED that the Defendant's Motion To Dismiss As Moot (Docket No. 41) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Plaintiff's Motion For Preliminary Injunction (Docket No. 37) be, and the same is hereby, **DENIED** as moot in light of the fact that the Plaintiff obtained the relief which he sought in said Motion when he was released from the SHU on May 1, 2007.

On August 2, 2007, Magistrate Judge Kaull entered a second Opinion/Report And Recommendation wherein he recommended that the Defendants' Motion To Dismiss, Or

In The Alternative, Motion For Summary Judgment be granted and that the Plaintiff's Complaint be dismissed with prejudice.

In his August 2, 2007, Opinion/Report And Recommendation, Magistrate Judge Kaull once again provided the parties with ten days from the date of said Opinion/Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

Thereafter, by Order entered August 28, 2007, the Court granted an Emergency Motion For Extension Of Time filed by the Plaintiff on August 16, 2007, and directed the Plaintiff to file any objections to Magistrate Judge Kaull's August 2, 2007, Opinion/Report And Recommendation on or before October 17, 2007. The Plaintiff's Objection To District Court's August 2, 2007 Report And Recommendation was filed on October 18, 2007.

Upon an independent *de novo* consideration of all matters now before the Court, it appears to the Court that the issues raised by the Plaintiff in his Complaint were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Furthermore, upon consideration of the Plaintiff's Objection to said Opinion/Report And Recommendation, it appears to the Court that the Plaintiff has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled civil action. Accordingly, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on August 2, 2007, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Defendants' Motion To Dismiss, Or In The Alternative, Motion For Summary Judgment (Docket No. 28) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Plaintiff's Complaint (Docket No. 1) be, and the same is hereby, **DISMISSED with prejudice**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

ENTER: March 12 , 2008

/S/ Robert E. Maxwell
United States District Judge

