

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ANTHONY L. ALLEN,

Plaintiff,

v.

Case No. 18-1348-JTM-KGG

WICHITA STATE UNIVERSITY,
et al.,

Defendants.

**MEMORANDUM AND ORDER ADOPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION**

This matter is before the court on the Magistrate Judge's Report and Recommendation for Dismissal (R&R) filed January 3, 2019 (Dkt. 6), which recommended the court dismiss plaintiff Allen's complaint for failure to state a viable federal cause of action pursuant to 28 U.S.C. §1915(e)(2) and Fed. R. Civ. P. 12(b)(6). The R&R informed plaintiff that he was entitled to file objections to the recommendations within 14 days of service, but that if he did not file specific, written objections within that 14-day period he would waive the right of appellate review of the Magistrate's proposed findings of fact, conclusions of law, and recommended disposition. (Dkt. 6, p. 11).

The R&R was mailed to plaintiff on January 3, 2019 by both certified mail and regular mail. The certified mail receipt shows the R&R was delivered and signed for on January 8, 2019. (Dkt. 7). The court finds that plaintiff received the R&R and its contents and that plaintiff had notice of the effect of his failure to timely file specific, written

objections to the recommendations of the Magistrate. To date, plaintiff has made no responsive filing.

The court has reviewed the R&R and finds that the Magistrate Judge fully and accurately considered the allegations in plaintiff's complaint and the governing legal authorities. The court agrees that to the extent plaintiff's complaint asserted any legally cognizable claims, the statute of limitations on those claims would have expired at the latest in 2017. Because plaintiff's complaint was not filed until December 26, 2018, even a favorable reading of the allegations does not show any valid claim on which plaintiff could prevail. The Magistrate Judge was correct that the complaint should be dismissed. (Dkt. 6, at 10) (citing *Chance v. Zinke*, 898 F.3d 1025, 1034 (10th Cir. 2018) ("If the allegations show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim.") (ellipsis and internal quotation marks omitted)).

The court adopts the R&R and dismisses this action for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6).

IT IS THEREFORE ORDERED this 2nd day of May, 2019, that defendant's claims, along with this case, are dismissed without prejudice.

/s/J. Thomas Marten
THE HONORABLE J. THOMAS MARTEN
UNITED STATES DISTRICT COURT