

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MICHAEL WAYNE ARNOLD :
 :
 v. : C.A. No. 15-031ML
 :
 A.T. WALL :

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

On January 21, 2015, Petitioner Michael Wayne Arnold filed this Habeas Corpus Petition pursuant to 28 U.S.C. § 2254 against A.T. Wall in his capacity as “prison director.” (Document No.

1). District Judge Lisi has referred the Petition to me for preliminary review pursuant to Rule 4 of the Federal Rules Governing Section 2254 Cases.

It is apparent from a preliminary review of this Petition that Petitioner fails to state any legally viable claims under 28 U.S.C. § 2254. He is a pretrial detainee and he does not allege that he is in “custody in violation of the Constitution or laws or treaties of the United States” as is necessary to support a claim under 28 U.S.C. § 2254(a). Rather, Petitioner alleges that he was assaulted by “prison guard Gass” on September 15, 2014 and denied medical attention. Although he names Director Wall as the Respondent, he does not allege any direct involvement by Director Wall in either the assault or denial of medical care. He does allege that Director Wall was present and witnessed the “raid” during which he was assaulted.

Accordingly, I recommend that this Habeas Corpus Petition be DISMISSED but without prejudice to Petitioner filing a new civil action based on these facts pursuant to 42 U.S.C. § 1983. If Petitioner files such an action, he is advised that the caption of his Complaint must name all of

the parties he is suing (Local Rule Cv 5(a)(1)), be accompanied by a civil cover sheet (Local Rule Cv 5(b)), and be accompanied by either the required civil case filing fee of \$400.00 (28 U.S.C. § 1914) or an application to proceed without prepayment of the filing fee due to indigency pursuant to 28 U.S.C. § 1915. In addition, Petitioner's Complaint must be in the form required by Rules 8 and 10 of the Federal Rules of Civil Procedure including containing a short and plain statement of his claim and a demand for the relief sought.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
January 26, 2015