United States Court of Appeals for the Fifth Circuit

No. 20-11047

MICHAEL JOSEPH DEMARCO, JR.,

Plaintiff—Appellant,

versus

JEREMY J. BYNUM, *Officer*,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:14-CV-94

Before CLEMENT, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM:

Michael Joseph DeMarco, Jr., Texas prisoner # 1564162, appeals the summary judgment dismissal of his 42 U.S.C. § 1983 claim that Jeremy Bynum, a correctional officer at the Allred Unit of the Texas Department of Criminal Justice (TDCJ), confiscated DeMarco's religious materials in violation of the Free Exercise Clause of the First Amendment. We affirm.

I.

In August 2014, DeMarco filed this § 1983 action against Bynum and other defendants. The district court dismissed the action for failure to state

a cognizable claim. DeMarco appealed, and this court affirmed in part, reversed in part, and remanded. *DeMarco v. Davis*, 914 F.3d 383, 386–90 (5th Cir.) (affirming dismissal of all defendants and claims save the free exercise claim against Bynum), *cert. denied*, 140 S. Ct. 250 (2019). Following remand, Bynum moved for summary judgment. He contended that TDCJ Administrative Directive (AD) 03.72 and his confiscation of DeMarco's religious materials pursuant to that policy were reasonably related to a legitimate penological objective, namely, maintenance of prison security based on Bynum's belief that the confiscated materials could be used in the trafficking or possession of contraband. Bynum also contended that he was entitled to qualified immunity. The district court agreed with Bynum on both points and granted summary judgment. DeMarco filed a timely notice of appeal.

II.

We review a district court's grant of summary judgment de novo, applying "the same standard as that employed by the district court." *McFaul v. Valenzuela*, 684 F.3d 564, 571 (5th Cir. 2012). That is, we affirm "if the movant shows that there is no genuine dispute as to any material fact and . . . the movant is entitled to judgment as a matter of law." *Id.* (quoting FED. R. CIV. P. 56(a)).

III.

On appeal, DeMarco attempts to raise several issues.[1] But only one issue was remanded to the district court for consideration: whether Bynum's

[1] For example, DeMarco argues that the confiscated materials were not altered and that TDCJ failed to follow protocols regarding storage of confiscated materials and chain of custody, as well as procedures regarding disciplinary hearings. These arguments are immaterial to this appeal. Whether the materials were altered is inconsequential because

confiscation of DeMarco's materials violated DeMarco's constitutional rights under the Free Exercise Clause, i.e., "whether the alleged confiscation was reasonably related to a legitimate penological objective." *See DeMarco*, 914 F.3d at 389–90. The district court's ultimate ruling on this issue rested on two key grounds that are supported by the record and the law: DeMarco's property was improperly stored per AD-03.72, and AD-03.72 is reasonably related to a legitimate penological goal of prison safety. Summary judgment was thus proper.

As stated in our prior opinion in this case, "[a]n inmate retains his right to the free exercise of religion, subject to reasonable restrictions stemming from legitimate penological concerns." *Id.* at 388–89. When evaluating the reasonableness of a prison's policy, we consider (1) whether there is a "valid, rational connection" between the regulation and the government interest; (2) whether there are alternative means of exercising the rights that remain open to prisoners; (3) the impact that accommodation of the asserted constitutional rights would have on other prisoners, guards, and prison resources; and (4) the presence or absence of ready alternatives that fully accommodate a prisoner's rights at de minimis cost to valid penological interests. *Turner v. Safley*, 482 U.S. 78, 89–91 (1987) (citation omitted). "[P]rison officials are entitled to 'substantial deference' in the exercise of their professional judgment," and it is an inmate's burden to prove "that a prison policy, as applied, is not reasonably related to legitimate penological objectives." *DeMarco*, 914 F.3d at 389.

DeMarco concedes that the materials were not properly stored. Further, the district court previously severed DeMarco's claim that he was denied due process at his disciplinary hearing; that claim is thus a separate cause of action not part of this appeal. *See DeMarco*, 914 F.3d at 387 & n.3.

AD-03.72 concerns the possession of inmate property. Section V ("In-Cell Storage Requirements") provides that when an inmate is not in his cell, his property—with some exceptions not relevant here—must be stored in a container with a storage capacity of 1.75–2.0 cubic feet. Section VIII ("Confiscation of Offender Personal Property") states that the inmate's "personal property may be confiscated at any time, from any location, for the reasons indicated in [Section VIII], and any other appropriately documented circumstances as necessary to ensure safety and security." One such reason is improper storage of property. The policy also defines non-dangerous contraband as "authorized property which has been altered, damaged, . . . or is out of place," and states that this type of contraband "[r]epresents a threat to the management of the unit" and "violates TDCJ rules."

DeMarco concedes that he did not store his religious materials as required by AD-03.72. And this court has previously indicated that TDCJ policies regarding storage of personal property do not infringe on a prisoner's right to free exercise of religion. *See Long v. Collins*, 917 F.2d 3, 4 (5th Cir. 1990) (addressing AD-03.72 and suggesting, albeit in dicta, that prison officials may impose reasonable restrictions on the amount and type of personal property inmates can possess without violating prisoners' constitutional rights); *see also Carrio v. Tex. Dep't of Crim. Just., Inst. Div.*, 196 F. App'x 266, 268 (5th Cir. 2006) (stating prisoner's "claimed denial of his First Amendment right to free exercise of his religion when prison officials enforced a new prison storage policy was . . . properly dismissed because the storage policy [was] reasonably related to legitimate penological interests" (citing *Safley*, 482 U.S. at 89)). We now confirm that to be the case.

Evaluating AD-03.72 in view of the considerations outlined in *Safley*, 482 U.S. at 89–91, Bynum's confiscation of DeMarco's religious materials was reasonably related to a legitimate penological objective. First, there is a

"valid, rational connection" between AD-03.72 and TDCJ's interest in prison safety and management, insofar as the policy is aimed at reducing the access of others to an inmate's personal property and preventing the trafficking of contraband. *See Safley*, 482 U.S. at 89 (citation omitted). There is also an alternative way for DeMarco to exercise his First Amendment rights, by accessing religious reading materials through the prison chaplain. The impact of accommodating DeMarco's constitutional rights on other prisoners, guards, and prison resources could be great, given the management and safety concerns underlying the policy. *See id.* at 90 (noting that "[i]n the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison's limited resources for preserving institutional order"). Finally, DeMarco has not "point[ed] to an alternative that fully accommodates [his] rights at de minimis cost to valid penological interests." *Id.* at 91. For these reasons, the district court did not err by concluding that DeMarco failed to demonstrate a violation of his First Amendment rights based on Bynum's confiscation of his improperly stored religious materials pursuant to AD-03.72.

Moreover, even if Bynum had violated DeMarco's constitutional rights, the district court correctly found that Bynum was entitled to qualified immunity because his actions were objectively reasonable. "The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Perniciaro v. Lea*, 901 F.3d 241, 255 (5th Cir. 2018) (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)). But "[a]n official that violates a constitutional right is still entitled to qualified immunity if his or her actions were objectively reasonable." *Id.* Bynum contends that he seized the materials because inmates can use unsecured items for trafficking and contraband purposes; this position is supported by

evidence in the record as well as the law referenced above. DeMarco, who has the burden to rebut the qualified immunity defense, *Baldwin v. Dorsey*, 964 F.3d 320, 325 (5th Cir. 2020), does not meaningfully do so.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

MICHAEL JOSEPH DEMARCO, JR., TDCJ No. 01564162,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 7:14-cv-094-O**
JEREMY J. BYNUM,	§	
Defendant.	§	

ORDER DISMISSING CASE

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 by Michael Joseph DeMarco, Jr., an inmate confined in the James V. Allred Unit of the Texas Department of Criminal Justice ("TDCJ") in Iowa Park, Texas. Defendant Jeremy J. Bynum is a former correctional officer at the Allred Unit. Pending before the Court are Defendant Bynum's Motion for Summary Judgment and Plaintiff's Brief in Opposition. ECF Nos. 60, 73. Upon consideration of the motion, the response, the record in this case, and the summary judgment evidence, the Court finds that the Motion for Summary Judgment should be granted.

Background

By order and judgment entered September 29, 2017, this action was dismissed for failure to state a claim on which relief may be granted. *See* ECF Nos. 25, 26. Plaintiff filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit. *See* ECF No. 26. On January 28, 2019, the Fifth Circuit affirmed this Court's dismissal of Plaintiff's claims that (1) his property was unlawfully confiscated, (2) he was denied access to the courts, (3) he suffered unlawful retaliation, and (4) Defendants Boyle and Stephens denied him the right to freely exercise his religion by failing to train subordinates and by ignoring previous complaints about Defendant

Bynum. *See* ECF No. 31. But, the Court of Appeals found that Plaintiff had stated a cognizable free exercise claim against Defendant Bynum in his individual capacity for confiscating Plaintiff's religious materials. *Id.* at 8. The Fifth Circuit remanded the case to this Court for further consideration of that one claim and directed that, "[o]n remand, the [district] court should determine whether the alleged confiscation was reasonably related to a legitimate penological objective." *Id.*

Legal Standards

Although incarcerated, an inmate retains his First Amendment right to the free exercise of religion, subject to reasonable restrictions and limitations necessitated by penological goals. *E.g., Turner v. Safley*, 482 U.S. 78, 89-91 (1987); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349-50 (1987); *Powell v. Estelle*, 959 F.2d 22, 25-26 (5th Cir. 1992). To fall within the purview of the free exercise clause of the First Amendment, a religious claim must satisfy the following two criteria: "First, the claimant's proffered belief must be sincerely held; the First Amendment does not extend to 'so-called religions which . . . are obviously shams and absurdities and whose members are patently devoid of religious sincerity.' " *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981) (quoting *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974)). Second, "the claim must be rooted in religious belief, not in 'purely secular' philosophical concerns." *Id.* (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)). Thus, only practices associated with sincerely held religious beliefs require accommodation by prison officials. *See e.g., U.S. v. Daly*, 756 F.2d 1076, 1081 (5th Cir. 1985) (citing *United States v. Ballard*, 322 U.S. 78, 86-88 (1944) and *United States v. Seeger*, 380 U.S. 163, 184 (1965)); *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994), *supplemented*, 65 F.3d 148 (9th Cir. 1995); *Mosier v. Maynard*, 937 F.2d 1521, 1526 (10th Cir. 1991). Unfortunately,

the realities of prison life dictate that even religious practices associated with sincerely held religious beliefs may be limited "in order to achieve legitimate correctional goals or to maintain prison security." *O'Lone*, 482 U.S. at 348.

To establish a free exercise violation, an inmate must demonstrate that prison officials prevented him from engaging in his religious conduct without any justification related to legitimate penological concerns. *Turner*, 482 U.S. at 89. In reviewing such claims, the Court considers the following factors: (1) whether a prison regulation is rationally related to a legitimate penological goal; (2) whether alternative means of exercising the right in question remain open to inmates; (3) the impact of accommodation on guards, other inmates and prison resources in general, and; (4) whether there is an absence of ready alternatives which would evince the reasonableness of a regulation or the existence of reasonable alternatives which would evince the unreasonableness of a regulation. *Id.* at 90. In evaluating prison rules that impinge on religious practices, the Court must accord wide deference to prison officials' decisions in light of the need to preserve internal order and security unless there is substantial evidence to indicate that prison administrators have exaggerated their response to such considerations. *See id.*

Discussion

Plaintiff DeMarco claims that he was denied his First Amendment right to the free exercise of his religion when Defendant Bynum confiscated and destroyed his collection of religious books and two Bibles. *See* Complaint, ECF No. 3 at 4. Plaintiff's Answers to the Court's Questions No. 1-4; ECF No. 15 at 1-4. Bynum concedes that Plaintiff's property was confiscated and that the property could have included religious books by Max Lucado, Charles Swindoll, and Joel Osteen, along with Plaintiff's Bible. *See* Brief in Support of Motion for Summary Judgment, ECF No. 61

at 10. But Bynum argues that Plaintiff's property was confiscated because it was altered and improperly stored. *Id.*

TDCJ-AD-03.72 Policy, Section V, "In-Cell Storage Requirements" provides that when an offender is absent from his housing area, his property, with some exceptions which do not include religious materials, shall be stored in a container with a storage capacity between 1.75 and 2.0 cubic feet. *See* Defendant's Appendix in Support of Motion for Summary Judgment (hereinafter "Defendant's Appendix"), ECF No. 62 at 374-75; Affidavit of Property Officer O'Rourke, ECF No. 62 at 416-17.

TDCJ-AD-03.72 Policy, Section VIII, "Confiscation of Offender Personal Property" provides that "[a]n offender's personal property may be confiscated at any time, from any location, for the reasons indicated in this section, and any other appropriately documented circumstances as necessary to ensure safety and security." *See* Defendant's Appendix, ECF No. 62 at 381. The policy provides that improperly stored property may be confiscated. *Id.* "Improperly stored property" is defined as property that "is not stored in accordance with this directive when the offender is not present in the assigned housing area." *Id.*

Plaintiff states that he was "at lunch, away from [his] cubicle" when Bynum seized his property. *See* Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment (hereinafter "Brief in Opposition"), ECF No. 73 at 9. Plaintiff further states that "[his] religious . . . property was neatly stacked in a commissary bag directly behind [his] locker." *Id.* at 7. He claims that two other inmates saw Bynum enter his cell, reach behind his locker, and seize his property. *Id.* at 9. Plaintiff states that Bynum later returned to his cell without his property. *Id.* Plaintiff claims that he asked Bynum why he took the property but Bynum acted indifferent and

then stated, "you don't f___ with me" and "I can take whatever I want , whenever I want." *Id.* at 9-10.

In his Step One and Step Two Grievances, where Plaintiff first described his encounter with Bynum, he states that he twice asked Bynum why he confiscated his legal and religious materials and that Bynum "didn't reply" and just "stared back at [him]." *See* Plaintiff's Exhibit, ECF No. 3 at 11, 13. In a later Step One Grievance filed by Plaintiff, he repeats his earlier statement that Bynum just stared at him when Plaintiff asked why his legal and religious materials were confiscated. *See* Plaintiff's Appendix, ECF No. 73-1 at 17.

In his Complaint, Plaintiff discusses his encounter with Bynum on the day his property was seized but makes no mention of the statements allegedly made by Bynum. *See* ECF No. 3 at 4-5. In his Answers to the Court's Questions, Plaintiff alleges for the first time that Bynum "stated that he could take whatever he wanted whenever he wanted." ECF No. 15 at 2. Then, in his Brief in Opposition to Defendant's Motion for Summary Judgment, Plaintiff adds another allegation that, during his encounter with Bynum, Bynum said, "you don't f___ with me." *See* ECF No. 73 at 9-10. Despite Plaintiff's changing allegations, any such flippant remarks made by Bynum have no impact on the Court's decision considering the pleadings, the weight of the summary judgment evidence, the relevant case law, and the Court's analysis. *See* Fifth Circuit Opinion, ECF No. 31 at 6 (stating that DeMarco's "changing tale [of retaliation] is conclusional at best.").

Defendant's summary judgment evidence includes a "Disposition of Confiscated Offender Property" form which reflects that DeMarco's property was confiscated because it was "improperly stored" and because the 13 books taken were "altered." *See* Defendant's Appendix, ECF No. 62 at 39. The form further indicates that DeMarco "[r]efused to sign" the "Offender

Notification" section. *Id.* The TDCJ Investigation Worksheet also reflects that Bynum confiscated DeMarco's property because it was improperly stored. *Id.* at 15.

Plaintiff argues that the confiscated religious books were not altered, that Bynum has failed to describe how the books were altered, and that he did not refuse to sign the "Offender Notification" regarding confiscation of property. *See* Brief in Opposition, ECF No. 73 at 16-17, 19. But Plaintiff does not dispute Bynum's claim that his legal and religious materials were improperly stored. *See* Brief in Opposition, ECF No. 73; Plaintiff's Statement of Disputed Factual Issues, ECF No. 74; Plaintiff's Declaration in Opposition to Defendant's Motion for Summary Judgment, ECF No. 75.

Prison officials may impose reasonable restrictions on the type and amount of personal property that inmates are allowed to possess while in prison. *See Long v. Collins*, 917 F.2d 3, 4 (5th Cir. 1990); *McRae v. Hankins*, 720 F.2d 863, 869 (5th Cir. 1983). "Texas prison regulations concerning space limitations for the storage of inmate property have been upheld by the Fifth Circuit." *Morris v. Cross*, No. 6:09-cv-236, 2010 WL 5684412 at *10 (E.D. Tex. Dec. 17, 2010) (citing *Long v. Collins*, 917 F.2d 3, 4–5 (5th Cir. 1990); *Guajardo v. Crain*, 275 F. App'x 290, 2008 WL 1790385 (5th Cir., April 17, 2008)), *rec. adopted*, 2011 WL 346071 (E.D. Tex. Feb. 1, 2011), *aff'd*, 476 F. App'x 783 (5th Cir. 2012). The United States Court of Appeals for the Fifth Circuit has held that the TDCJ's policy requiring proper storage of an inmate's personal property, including religious materials, directly and reasonably relates to the legitimate penological goal of maintaining prison security. *Carrio v. Texas Dep't of Criminal Justice, Institutional Div.*, 196 F. App'x 266, 268 (5th Cir. 2006).

As noted earlier, the TDCJ policy requires that, when an offender is absent from his housing area, his property, with some exceptions that are irrelevant here, shall be stored in a TDCJ-approved container which has a storage capacity between 1.75 and 2.0 cubic feet. *See* Defendant's Appendix, ECF No. 62 at 374-75; Affidavit of Property Officer O'Rourke, ECF No. 62 at 416-17. Plaintiff concedes that he was at lunch, away from his assigned cell, when Bynum confiscated his property which included religious materials. *See* Brief in Opposition, ECF No. 73 at 9. Plaintiff further concedes that his religious materials were stacked in a commissary bag located behind his storage locker. *Id.* at 7. And he claims that Bynum was seen by other inmates entering his cell and taking the property that was located behind his locker. *Id.* at 9. Defendant's summary judgment evidence, along with Plaintiff's statements, establish that Plaintiff's religious materials were not stored in his TDCJ-approved storage container when he was away from his assigned housing area. Rather, they were improperly stored in a commissary bag located behind his locker. Thus, the Court finds that the confiscation of Plaintiff's improperly stored property was reasonably related to a legitimate penological goal of maintaining prison security. *See Carrio*, 196 F. App'x at 268.

The summary judgment evidence establishes that DeMarco retained his right to practice his religion by reading religious materials available from the prison Chaplain who is authorized to provide free religious literature to inmates upon request. *See* Chaplaincy Policy 11.07, ECF No. 62 at 193-95. The evidence further establishes that, if inmate property is left unsecured and improperly stored, any offender can gain access to the property which can lead to trafficking and contraband violations thereby compromising prison security. *See* Affidavit of Property Officer O'Rourke, ECF No. 62 at 416-17. Because the confiscation of DeMarco's improperly stored property was reasonably related to the legitimate penological objective of maintaining prison security, DeMarco cannot demonstrate a violation of his First Amendment rights.

Qualified Immunity

Defendant Bynum has asserted the defense of qualified immunity. Government officials are entitled to qualified immunity from suit when performing discretionary functions unless their conduct violated statutory or constitutional rights, clearly established at the time of the alleged incident, of which a reasonable person would have known. *Gibson v. Rich*, 44 F.3d 274, 277 (5th Cir. 1995). "Qualified immunity is a defense from both liability and suit." *Heitschmidt v. City of Houston*, 161 F.3d 834, 840 (5th Cir. 1998) (citing *Vander Zee v. Reno*, 73 F.3d 1365, 1368 (5th Cir. 1996)).

The first step in evaluating a government official's entitlement to a defense of qualified immunity is to determine both what the current applicable law is and whether it was clearly established at the time of the events giving rise to the lawsuit. *Schultea v. Wood*, 47 F.3d 1427, 1432 (5th Cir. 1995) (citing *Siegert v. Gilley*, 500 U.S. 226, 231 (1991)). If the plaintiff has stated a violation of a constitutional right which was clearly established at the time, the Court should then determine whether a reasonable official would have understood that his or her conduct violated that right. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). The law relating an inmate's First Amendment right to freely exercise his religion was well established at the time of the events giving rise to this lawsuit. The Court has determined that Defendant Bynum acted in accordance with well-established law.

Based upon the pleadings and evidence before this Court, the conduct of Defendant Bynum was objectively reasonable under the circumstances. As such, he is entitled to qualified immunity from suit.

Conclusion

Summary judgment is proper when the pleadings and evidence illustrate that no genuine issue exists as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Slaughter v. Southern Talc Co.*, 949 F.2d 167, 170 (5th Cir. 1991). Disputes concerning material facts are genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996) (en banc) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Substantive law provides that an issue is "material" if it involves a fact that might affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248; *Burgos v. Southwestern Bell Telephone Co.*, 20 F.3d 633, 635 (5th Cir. 1994). The nonmovant is not required to respond to the motion until the movant properly supports his motion with competent evidence. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995). However, once the movant has carried his burden of proof, the nonmovant may not sit idly by and wait for trial. *Page v. DeLaune*, 837 F.2d 233, 239 (5th Cir. 1988).

When a movant carries his initial burden, the burden then shifts to the nonmovant to show that the entry of summary judgment is inappropriate. *Celotex*, 477 U.S. at 322-24; *Duckett v. City of Cedar Park, Tex.*, 950 F.2d 272, 276 (5th Cir. 1992). Although the nonmovant may satisfy this burden by tendering depositions, affidavits, and other competent evidence, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the nonmovant's burden," *Douglass*, 79 F.3d at 1429, as "the adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). Merely colorable

evidence or evidence not significantly probative, however, will not defeat a properly supported motion for summary judgment. *Anderson*, 477 U.S. at 249-50. Furthermore, a mere scintilla of evidence will not defeat a motion for summary judgment. *Anderson*, 477 U.S. at 252; *Davis v. Chevron U.S.A., Inc.*, 14 F.3d 1082, 1086 (5th Cir. 1994).

Summary judgment evidence is viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Rosado v. Deters*, 5 F.3d 119, 123 (5th Cir. 1993). In addition, factual controversies are resolved in favor of the nonmovant, but only when both parties have submitted evidence of contradictory facts, thus creating an actual controversy. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). In the absence of any proof, however, the Court does not assume that the nonmovant could or would prove the necessary facts. *Id.*

In making its determination on the motion, the Court looks at the full record including the pleadings, depositions, answers to interrogatories, admissions, and affidavits. Fed. R. Civ. P. 56(c); *Williams v. Adams*, 836 F.2d 958, 961 (5th Cir. 1988). However, "the [Court's] function is not [ ] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249, 106 S. Ct. at 2511. The movant's motion for summary judgment will be granted if he meets his burden and the nonmovant fails to make the requisite showing that a genuine issue exists as to any material fact. Fed. R. Civ. P. 56(e)(2).

The summary judgment evidence presented in this case establishes that there are no genuine issues of material fact for trial and that Defendant Bynum is entitled to summary judgment as a matter of law.

For the foregoing reasons and considering the summary judgment evidence submitted, Defendant's Motion for Summary Judgment (ECF No. 60) is **GRANTED** and Plaintiff's complaint is **DISMISSED** with prejudice.

SO ORDERED this **29th day** of **September, 2020**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

MICHAEL JOSEPH DEMARCO, JR., TDCJ No. 01564162,	§	
Plaintiff,	§	
v.	§	Civil Action No. 7:14-cv-094-O
JEREMY J. BYNUM,	§	
Defendant.	§	

JUDGMENT

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered,

It is **ORDERED**, **ADJUDGED**, and **DECREED** that Defendant's Motion for Summary Judgment (ECF No. 60) is **GRANTED** and Plaintiff's complaint is **DISMISSED** with prejudice.

SIGNED this **29th day** of **September, 2020**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE