UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JAMES CRUZ,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 98-0278-P
	)	
ANDROSCOGGIN COUNTY SHERIFF, et al.,	)	
	)	
Defendants	)	

RECOMMENDED DECISION

Plaintiff filed this action in July, 1998. His Amended Complaint, filed October 6, 1998, asserts various violations of his sixth amendment right to access the courts. Plaintiff's subsequent attempt to further amend his complaint was denied by Order dated June 3, 1999.

Plaintiff, in both his original and Amended Complaint, seeks injunctive relief only; there is no claim for damages. The record in this matter reflects that Plaintiff has not been incarcerated at the Androscoggin County Jail since October 7, 1998. Pltf. Admissions, ¶ 2 (attached to Def. Stmt. of Mat. Facts).

Defendants move for summary judgment on the entirety of Plaintiff's Amended Complaint and state several grounds in support of that request.[1] The first ground is that

[1] Plaintiff has not responded to the Motion for Summary Judgment. In this District, a party's failure to timely respond to a motion is generally construed to waive objection to the motion. D. Me. R. 7(c). However, the Federal Rules of Civil

the matter is now moot. *Thomas v. Massachusetts Dept. Of Educ.*, 130 F.3d 477 (1st Cir. 1997). The Court agrees, and is further satisfied that this matter is not one "'capable of repetition, yet evading review,'" permitting this Court to review it as an exception to the mootness doctrine. *Id*. at 479-80 (quoting *Honig v. Doe*, 484 U.S. 305, 318 (1988)). Accordingly, the Court is without jurisdiction to hear Plaintiff's claims. *Id*. at 479. I therefore recommend Defendants' Motion for Summary Judgment be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: August 16, 1999

Procedure require us to examine the merits of a motion for summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991).