

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

CORNELIUS KENTA RUSSELL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:09-CV-978-TMH
)	[WO]
)	
MIKE SHELLEY, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

On October 20, 2009, Cornelius Kenta Russell ["Russell"], a county inmate, filed this 42 U.S.C. § 1983 action regarding an alleged physical altercation with jail personnel on August 17, 2009. Upon review of the complaint, the court deemed it necessary that Russell file an amended complaint and therefore entered an order requiring that he undertake such action on or before November 9, 2009. *Order of October 22, 2009 - Court Doc. No. 4*. The court specifically cautioned Russell that his "fail[ure] to comply with the directives of this order" would result in entry of a Recommendation "that this case be dismissed." *Id.* at 2.

On December 15, 2009, Russell submitted documents to the court in response to the aforementioned order. However, these documents were "incoherent, rambling and unintelligible" prompting the court to order that they be stricken from the docket and returned to the plaintiff. *Order of December 15, 2009 - Court Doc. No. 6* at 1. The court further ordered the plaintiff to file a proper amended complaint on or before January 4, 2010. *Id.*

The plaintiff was again "cautioned that if he fails to comply with the directives of this order the undersigned will recommend that this case be dismissed." *Id.* at 2. As of the present date, Russell has failed to file an amended complaint in compliance with the orders of this court. The court therefore concludes that this case should be dismissed.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice for failure of the plaintiff to file an amended complaint in accordance with the directive of the orders entered in this case.

It is further

ORDERED that on or January 28, 2010 the parties may file objections to the Recommendation. Any objection must specifically identify the findings in the Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings in the Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, en banc), adopting as binding precedent all decisions of the former Fifth

Circuit issued prior to September 30, 1981.

DONE this 13th day of January, 2010.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE