

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

RONNIE McCLAIN, #133958,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:05-CV-943-F
	)	[WO]
	)	
BOB RILEY, et al.,	)	
	)	
Defendants.	)	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

In this 42 U.S.C. § 1983 action, Ronnie McClain [“McClain”], a state inmate, challenges the conditions of confinement to which he is subjected at the Elmore Correctional Facility and asserts claims with respect to the general conditions of correctional facilities operated by the Alabama Department of Corrections. McClain filed a motion for issuance of permanent injunction, *see Court Doc. No. 2*, in which he seeks issuance of an emergency injunction under Rule 65, *Federal Rules of Civil Procedure*. The court therefore construes this document to contain a motion for preliminary injunction. Upon consideration of the motion for preliminary injunction, the court concludes that this motion is due to be denied.

**DISCUSSION**

The decision to grant or deny a preliminary injunction “is within the sound

discretion of the district court . . .” *Palmer v. Braun*, 287 F.3d 1325, 1329 (11<sup>th</sup> Cir. 2002). The four prerequisites which McClain must demonstrate are: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury without the injunction; (3) that the harm to McClain outweighs the harm to the non-moving parties; and (4) that an injunction would be in the interest of the public. *Palmer*, 287 F.3d at 1329; *Cate v. Oldham*, 707 F.2d 1176 (11<sup>th</sup> Cir. 1983); *Shatel Corp. v. Mao Ta Lumber and Yacht Corp.*, 697 F.2d 1352 (11<sup>th</sup> Cir. 1983).

“[A] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion” as to each of the four prerequisites. *See McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11<sup>th</sup> Cir. 1998) (internal citations and quotations omitted); *see also Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179 (5<sup>th</sup> Cir. 1975) (grant of preliminary injunction “is the exception rather than the rule,” and movant must clearly carry the burden of persuasion). The moving party’s failure to demonstrate a “substantial likelihood of success on the merits” may defeat the party’s claim, regardless of the party’s ability to establish any of the other elements. *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11<sup>th</sup> Cir. 1994); *see also Siegel v. Lepore*, 234 F.3d 1163, 1176 (11<sup>th</sup> Cir. 2000) (noting that “the absence of a substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper”).

McClain fails to present any evidence of a substantial likelihood of success on the merits or that he will suffer irreparable harm absent issuance of a preliminary injunction.

He also fails to address balancing the equities of the parties or whether the issuance of an injunction would be in the public interest. The pleadings before the court therefore fail to establish that McClain meets each of the prerequisites necessary for issuance of a preliminary injunction.

### CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the plaintiff's motion for preliminary injunction be denied.

It is further

ORDERED that on or before October 19, 2005 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 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d

1206 (11<sup>th</sup> Cir. 1981, en banc), adopting as binding precedent all decisions of the former Fifth Circuit issued prior to September 30, 1981.

Done this 5<sup>th</sup> day of October, 2005.

/s/ Vanzetta Penn McPherson  
UNITED STATES MAGISTRATE JUDGE