

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

JODY EDWIN GRIFFITH, # 249169,	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 2:07-cv-0749-MEF
	)	
GARY ANDERSON, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

On February 17, 2010, the Magistrate Judge filed a Recommendation (Doc. # 54) in this case to which no timely objections have been filed. Upon an independent review of the file in the case and upon consideration of the Recommendation of the Magistrate Judge, it is hereby the

ORDER, JUDGMENT and DECREE of the Court that:

1. The Recommendation of the Magistrate Judge is ADOPTED.
2. Defendants Dulaney's and Everette's motion for summary judgment (Doc. # 45) is GRANTED to the extent Dulaney and Everette seek dismissal of this case due to the plaintiff's failure to properly exhaust the administrative remedies previously available to him at Kilby Correctional Facility.
3. The plaintiff's claims for injunctive and declaratory relief are DISMISSED as moot.
4. Defendants Anderson's and Peterson's motion for summary judgment on

the plaintiff's § 1983 excessive-force and deliberate-indifference claims (Doc. # 14) are DENIED.

5. Defendant Anderson's motion for summary judgment on the plaintiff's supplemental state-law claim for assault and battery (Doc. # 14) is DENIED.

6. Defendant Peterson's motion for summary judgment on the plaintiff's supplemental state-law claim for conspiracy to commit assault and battery (Doc. # 14) is DENIED.

7. Defendant Peterson's motion for summary judgment on the plaintiff's supplemental state-law claim for contributory negligence (Doc. # 14) is GRANTED.

8. The plaintiff's § 1983 excessive-force and deliberate-indifference claims and supplemental state-law claims for assault and battery against Defendant Anderson, and the plaintiff's § 1983 excessive-force and deliberate-indifference claims and supplemental state-law claim for conspiracy to commit assault and battery against Defendant Peterson will be set for trial by jury.

DONE this the 16th day of March, 2010.

/s/ Mark E. Fuller  
CHIEF UNITED STATES DISTRICT JUDGE