

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

RODNEY ALVERSON, #132431,)
)
Plaintiff,)
)
v.)
)
JOHN CUMMINS, et al.,)
)
Defendants.)

CASE NO. 2:09-CV-81-WHA
[WO]

RECOMMENDATION OF THE MAGISTRATE JUDGE

This is a 42 U.S.C. § 1983 action in which Rodney Alverson [“Alverson”], a state inmate, challenges actions of correctional officials at the Easterling Correctional Facility with respect to conditions of confinement at Easterling, being slapped on the back of the head by a riot officer, the denial of visitation to family members, the lack of access to tobacco products, and denial of adequate treatment for mental and medical conditions associated with his nicotine withdrawals. In his complaint, Alverson seeks to proceed on behalf of “all present and future inmates of Easterling Correctional Facility.” *Plaintiff’s Amended Complaint - Court Doc. No. 9* at 1. The court construes this request as a motion to certify class under Rule 23, *Federal Rules of Civil Procedure*. Upon consideration of the motion to certify case as a class action, the court concludes that this motion is due to be denied.

Alverson is a a *pro se* inmate unschooled in the law who seeks to represent the interests of all inmates affected by the actions about which he complains. Among the requirements which litigants must meet in order to maintain an action as a class action is that

the “representative parties will fairly and adequately protect the interests of the class.” Rule 23(a)(4), *Federal Rules of Civil Procedure*. While a *pro se* inmate may “plead and conduct” his own claims in federal court, 28 U.S.C. § 1634, he has no concomitant right to litigate the claims of other individuals. The competence of a layman is “clearly too limited to allow him to risk the rights of others.” *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975); *Hummer v. Dalton*, 657 F.2d 621 (4th Cir. 1981); *Ethnic Awareness Organization v. Gagnon*, 568 F.Supp. 1186 (E.D. Wis. 1983); *Inmates, Washington County Jail v. England*, 516 F.Supp. 132 (E.D. Tenn. 1980), *affirmed*, 659 F.2d 1081 (6th Cir. 1981). Moreover, the court finds that the prosecution of separate civil actions will not create a risk of inconsistent or varying adjudications with respect to any general claims for relief. Rule 23(b)(1)(A), *Federal Rules of Civil Procedure*. Furthermore, the questions of fact common to proposed class members do not predominate over such questions affecting projected individual members. Rule 23(b)(3), *Federal Rules of Civil Procedure*; *see also England*, 516 F.Supp. 144 (denying *pro se* plaintiffs’ request to certify action as a class action finding that “any declaratory relief granted ... would likely inure to the benefit of other similarly-situated individuals” even absent grant of request for class certification). Thus, the plaintiff’s motion to certify this case as a class action is due to be denied.

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the plaintiff’s motion to certify case as a class action be DENIED.

It is further

ORDERED that on or before April 13, 2009 the parties may file objections to this Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. 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 and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation 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 of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 27th day of March, 2009.

/s/Terry F. Moorner
TERRY F. MOORER
UNITED STATES MAGISTRATE JUDGE