

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

TOMMIE McCALL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:09-CV-797-TMH
)	[WO]
)	
MONTGOMERY POLICE DEPT.,)	
)	
Defendant.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

This case is before the court on a 42 U.S.C. § 1983 complaint filed by Tommie McCall [“McCall”], an inmate presently confined at the Easterling Correctional Facility. In this complaint, McCall challenges actions taken against him during his arrest on May29, 2009.

On January 27, 2010, prior to service of the complaint, McCall filed a motion to dismiss this case (Court Doc. No. 8). Upon consideration of the plaintiff’s motion to dismiss, the court concludes that this motion is due to be granted. Furthermore, since the complaint has not been served, this case should be dismissed without prejudice. Rule 41(a)(1), *Federal Rules of Civil Procedure*.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the plaintiff’s motion to dismiss be granted and that this case be dismissed without prejudice.

It is further

ORDERED that on or before March 3, 2010 the plaintiff may file objections to the

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 18th day of February, 2010.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
CHIEF UNITED STATES MAGISTRATE JUDGE