

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

CARLOS MCQUARLEY, #198468,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:13cv200-WHA
)	
WARDEN KENNETH SCONYERS, et al.,)	(WO)
)	
Defendants.)	

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #9), entered on April 16, 2013, and the Plaintiff’s Objection (styled as “Memorandum”) (Doc. #10), filed on April 26, 2013.

Plaintiff objects to the Recommendation that his Complaint be dismissed prior to service. He filed his § 1983 action against Wardens Sconyers, Carter, and Hetzel in regard to a disciplinary he received for assault on a correctional officer (Officer Thompkins) . Plaintiff alleges that it was actually the correctional officer who assaulted him and complains that Defendants Sconyers, Hetzel, and Carter, nevertheless, believed Lt. Thompkins’ version of the altercation despite there being no evidence in Plaintiff’s prison record that he fights with correctional officers. Plaintiff also faults Defendants for not being more understanding rather than taking sides with Defendant Thompkins. Plaintiff complains that he fears bad things will come his way because he doesn’t know what correctional officers might do to him and that they may try to hurt him.

The Magistrate Judge has recommended dismissal of the Complaint against the named defendants based on the speculative nature of Plaintiff’s allegations regarding his fears that

correctional officers may try to harm him. The Recommendation also found dismissal of the Complaint against Defendants appropriate on the grounds that there is no respondeat superior liability in a § 1983 action, there is no right to be housed in a particular area of the prison or in any particular prison, there is no liberty interest in being granted parole, and that due process is not implicated by a generalized assertion that prison officials upheld an allegedly erroneous disciplinary charge.

In his objection, Plaintiff contends that he cannot obtain evidence to prove his argument and "hopes. . . the court would so order it." He further maintains that he still lives in fear and appears to claim that he is being punished (housed in segregation) for something he didn't do.

Plaintiff's Complaint fails against the named Defendants for the reasons explained in the Recommendation. His objection to the Recommendation does not provide any basis on which to withdraw the findings and conclusions therein.

Therefore, after an independent evaluation and *de novo* review of this case, Plaintiff's Objection is OVERRULED, the court ADOPTS the Recommendation of the Magistrate Judge, and it is hereby

ORDERED that Plaintiff's Complaint is DISMISSED with prejudice prior to service of process pursuant to the directives of 28 U.S.C. § 1915(E)(2)(B)(i) and (ii).

DONE this 12th day of June, 2013.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE