

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

ROBERT S. LLOYD,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	2:19cv411-MHT
)	(WO)
ALABAMA DEPT. OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

OPINION

Pursuant to 42 U.S.C. § 1983, plaintiff, an inmate, filed this lawsuit asserting that the correctional defendants violated his Eighth Amendment rights by failing to protect him from assault and that the defendant inmate violated his Eighth Amendment rights by assaulting him--resulting in the loss of plaintiff's eye. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that plaintiff's constitutional claims against the defendant Alabama Department of Corrections and the defendant inmate be dismissed with prejudice. Also before the court are plaintiff's objections to the

recommendation.

After an independent and de novo review of the record, the court concludes that plaintiff's objections should be overruled and the magistrate judge's recommendation adopted, with the following caveats. The court's dismissal will not be pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) for two reasons. First, § 1915(e)(2) authorizes dismissal of only "the case," not a claim, and here the court is not dismissing the entire case. Second, § 1915(e)(2)(B)(i) authorizes the dismissal of a case only when it is "frivolous or malicious"; plaintiff's case is neither. In addition, the dismissal of plaintiff's Eighth Amendment claim against the inmate defendant will be without prejudice, so that plaintiff may, if he wishes, sue the inmate defendant under state law.

An appropriate judgment will be entered.

DONE, this the 8th day of October, 2019.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE