

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

CORNELIUS MILNER

*

Plaintiff,

*

v.

*

3:07-CV-152-WHA
(WO)

TALLAPOOSA COUNTY JAIL, *et al.*,

*

Defendant.

*

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, an inmate incarcerated at the Tallapoosa County Jail located in Dadeville, Alabama, filed this 42 U.S.C. § 1983 action on February 21, 2007. He complains that Defendants are violating his constitutional rights by housing him with an inmate who has AIDS. Plaintiff names as Defendants the Tallapoosa County Jail, Sheriff Jimmy Abbett, and Jail Administrator Blake Jennings.

Upon review of the complaint, the court concludes that dismissal of Plaintiff's claims against the Tallapoosa County Jail prior to service of process is appropriate under 28 U.S.C. § 1915(e)(2)(B)(i).

DISCUSSION

The Tallapoosa County Jail is not a legal entity and, therefore, is not subject to suit or liability under § 1983. *See Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992). In light of the foregoing, the court concludes that Plaintiff's claims against this defendant are due to

be dismissed. *Id.*

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that Plaintiff's claims against the Tallapoosa County Jail be DISMISSED with prejudice prior to service of process pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(i), and that this party be dismissed as a defendant to the complaint.

It is further the Recommendation of the Magistrate Judge that this case with respect to the remaining defendants be referred back to the undersigned for additional proceedings.

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **March 8, 2007**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. 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 recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report 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 23rd day of February, 2007.

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