

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TONY EUGENE GRIMES,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:12-cv-01909-LSC-JHE
)	
KIM T. THOMAS, et al.,)	
)	
Defendants.)	

MEMORANDUM OF OPINION

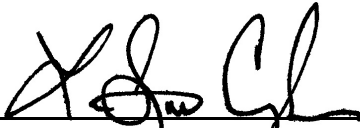
On December 30, 2014, the magistrate judge filed a report and recommendation that Defendants' motion for summary judgment be granted and this cause be dismissed with prejudice. (Doc. 37). The magistrate judge further recommended Plaintiff's motion for summary judgment be denied. (*Id.*). Plaintiff has filed objections. (Doc. 39).

In his objections, Plaintiff restates his claims the I-CON retrofitted toilets in cellblocks at Donaldson contribute to an unsanitary environment and create a health hazard. The toilets may be flushed two times within a five minute time frame and, after the flush sensor is activated, the watercloset flushes immediately. If the fixture is flushed twice within a five minute period, the system will automatically lockout and the flushing mechanism will be non-operational for one hour. After the lockout time has expired, the system will automatically resume normal operation. Plaintiff does not dispute he need wait only five minutes between flushes to prevent the toilet from locking out for one hour. Neither does Plaintiff dispute by following proper operating procedure, the toilet in his cell may be flushed ten times or more within an hour. Instead, Plaintiff complains the five minute waiting period between flushes is either inconvenient or he and his roommate do not

communicate with each other that five minutes should pass before flushing the toilet again.¹ Additionally, Plaintiff states it would take a correctional officer seven to ten minutes to retrieve a key to open the pipechase and flush the toilet. The undisputed facts do not establish the conditions Plaintiff complains of are extreme or that defendants are deliberately indifferent to such conditions. *See Chandler v. Crosby*, 379 F.3d 1278, 1298 (11th Cir. 2004).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion the magistrate judge's report is due to be and is hereby ADOPTED and his recommendation is ACCEPTED. The Court EXPRESSLY FINDS there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law. Accordingly, Defendants' motion for summary judgment is due to be GRANTED and this action is due to be DISMISSED WITH PREJUDICE. Additionally, Plaintiff's motion for summary judgment is due to be DENIED. A Final Judgment will be entered.

DONE this the 12th day of February, 2014.



L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE
174256

¹ Plaintiff claims during the night, “it would be abnormal for [his] roommate to stay by the toilet and just wait 5 minutes before he flush[es] it again” to remove all of the waste. (Doc. 39, Grimes Aff. at 3). Plaintiff further contends he cannot wait five minutes between flushes in the morning because he would risk missing breakfast. (*Id.* at 5). He also states when he and his roommate are allowed to leave their cell during the day, they do not “keep up” with when the other uses the toilet. (Doc. 39, Grimes Aff. at 6).