

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

| | | |
|----------------------|---|--------------------------------|
| CLIFTON LAMAR JONES, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 4:15-cv-01543-LSC-SGC |
| |) | |
| ANTHONY R. MOSTELLA, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION

The magistrate judge filed a report on January 31, 2017, recommending the plaintiff’s Eighth Amendment excessive force and Fourteenth Amendment due process and equal protection claims be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. (Doc. 18). The magistrate judge further recommended the plaintiff’s request for release from prison be denied. (*Id.*). The magistrate judge also recommended the defendant’s motion for summary judgment be denied as moot. (*Id.*). The plaintiff filed objections to the report and recommendation on February 6, 2017. (Doc. 21).

In his objections, the plaintiff states that he wants to “proceed with this action” and does not understand how “everything is being denied.” (Doc. 21). The plaintiff contends he is “looking for justice” and reasserts his assertion that he

should not be imprisoned. (*Id.*). The plaintiff alleges he is currently in segregation and does not have telephone or store privileges and cannot purchase envelopes or stamps. (*Id.*).

The plaintiff does not address the magistrate judge's conclusion that his claims for excessive force, due process, and equal protection are barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), because a successful outcome in the present action would contradict his 2016 assault conviction and prison disciplinary proceedings, which have not been invalidated. (Doc. 18 at 10-15). Neither does the plaintiff address the magistrate judge's finding that his request for immediate release must be brought in a habeas action, rather than under 42 U.S.C. § 1983. (*Id.* at 15). *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Richardson v. Fleming*, 651 F.2d 366, 373 (5th Cir. 1981).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the magistrate judge's report is **ADOPTED** and the recommendation is **ACCEPTED**. Therefore, in accordance with 28 U.S.C. § 1915(e)(2)(B)(ii), the plaintiff's Eighth Amendment excessive force and Fourteenth Amendment due process and equal protection claims are due to be dismissed without prejudice for failing to state a claim upon which relief can be granted. Additionally, the plaintiff's request to be

released from prison is due to be denied. Lastly, the defendant's motion for summary judgment is due to be denied as moot. (*Id.*).

A Final Judgment will be entered.

DONE AND ORDERED ON FEBRUARY 24, 2017.

A handwritten signature in black ink, appearing to read 'L. Scott Coogler', written over a horizontal line.

L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

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