

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

DAVID SCOTT GAFFORD,

Plaintiff,

v.

JEFFERSON DUNN, et al.,

Defendants.

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Case No.: 7:16-cv-01397-MHH-TMP

ORDER

The magistrate judge entered a report on October 12, 2016 in which he recommended that the Court dismiss without prejudice plaintiff David Scott Gafford’s claims against the Alabama Department of Corrections, Jefferson Dunn, and Warden Willie Thomas in his official capacity. (Doc. 8, p. 12). The magistrate judge also recommended that the Court refer the case back to him for further proceedings on Mr. Gafford’s Eighth Amendment claim against Warden Thomas in his individual capacity. (Doc. 8, p. 12). The magistrate judge advised Mr. Gafford of his right to file objections to the report and recommendation within 14 days. (Doc. 8, pp. 12-13). To date, Mr. Gafford has not filed objections to the report and recommendation.

A district court “may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court reviews legal conclusions in a report de novo and reviews for plain error factual findings to which no objection is made. *Garvey v. Vaughn*, 993 F.2d 776, 779 n. 9 (11th Cir. 1993); *see also LoConte v. Dugger*, 847 F.2d 745, 749 (11th Cir. 1988); *Macort v. Prem, Inc.*, 208 Fed. Appx. 781, 784 (11th Cir. 2006).¹

The Court finds no misstatements of law in the report and no plain error in the magistrate judge’s description of the relevant facts. Therefore, the Court adopts the magistrate judge’s report and accepts his recommendation.

Pursuant to 28 U.S.C. § 1915A(b), the Court **DISMISSES WITHOUT PREJUDICE** Mr. Gafford’s claims against the Alabama Department of Corrections, Jefferson Dunn, and Warden Willie Thomas in his official capacity. The Court **REFERS** Mr. Gafford’s remaining Eighth Amendment claim to the magistrate judge for further proceedings.

DONE and ORDERED this June 28, 2017.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

¹ When a party objects to a report, a district court must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. §§ 636(b)(1)(B)-(C).