

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

DRAPER FRANK WOODYARD,)	
#183250,)	
)	
Plaintiff,)	
)	
vs.)	CIV. ACT. NO. 1:22-cv-183-TFM-MU
)	
J. KING, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

On July 7, 2022, the Magistrate Judge entered a Report and Recommendation that this action be dismissed prior to service of process pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). *See* Doc. 6. Plaintiff timely filed objections to the Report and Recommendation on July 19, 2022. *See* Doc. 8. Subsequently, Plaintiff filed a motion for a subpoena which the Magistrate Judge denied. *See* Docs. 9, 10. On October 5, 2022, Plaintiff filed objections to the order denying the subpoena. *See* Doc. 11. The Court will address all matters here.

The Court will first address the “Objection to Doc. 10” wherein he clearly objects to the Magistrate Judge’s order denying the request for a subpoena. *See* Doc. 11. Pursuant to Fed. R. Civ. P. 72(a), “[a] party may serve and file objections to the order within 14 days after being served with a copy...[then the] district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or contrary to law.” In these objections, Plaintiff lodges general criticisms at the Magistrate Judge and allegations of bias. However, the objections do not overcome the fact that this case was already before the undersigned on a report and recommendation for dismissal and if dismissed, then no subpoena would issue. Further, discovery does not commence until after the Defendants have answered and the parties have

conducted a discovery conference pursuant to Fed. R. Civ. P. 26(f). In the case at hand, Plaintiff filed a motion to proceed *in forma pauperis* and therefore the Court is required to review his Complaint under 28 U.S.C. § 1915(e)(2)(B) and therefore service of process on the defendants was stayed pending the review. Therefore, the Magistrate Judge's order denying the subpoena is not clearly erroneous and the objections (Doc. 11) are **OVERRULED**.

The Court now turns to the Report and Recommendation and related objections. The Magistrate Judge identified misrepresentations of Plaintiff's litigation history in that he failed to disclose multiple lawsuits when he filed his complaint as is required for an inmate filing *in forma pauperis*. Plaintiff filed his objections which either misunderstand or misconstrue the Magistrate Judge's analysis regarding this complaint filed under 42 U.S.C. § 1983. The Complaint is clear in that Plaintiff failed to disclose the bulk of his litigation history which he was required to do. *See* Doc. 1. Therefore, his objections to the Report and Recommendation are **OVERRULED**.

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Report and Recommendation to which objection is made, the Report and Recommendation is **ADOPTED** as the opinion of this Court. It is **ORDERED** that this action be **DISMISSED without prejudice** as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), and that the action be counted as a strike for the purposes of 28 U.S.C. § 1915(g).

A separate judgment will issue pursuant to Fed. R. Civ. P. 58.

DONE and ORDERED this 31st day of October, 2022.

/s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE