

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

RAYMOND ALLEN DAVIS, Reg. # 41200-074

PLAINTIFF

v.

CASE NO. 2:08CV00209-JLH-BD

T. C. OUTLAW, Warden,
FCI - Forrest City, Arkansas

DEFENDANT

ORDER

The Court has received the Recommended Disposition from Magistrate Judge Beth Deere. After careful review of the Recommended Disposition, the timely objections received thereto, as well as a *de novo* review of the record, the Court concludes that the Recommended Disposition should be, and hereby is, approved and adopted as this Court's findings. Davis argues that the Magistrate Judge erred in characterizing his action as a *Bivens* action, with the following comments added.

Davis argues that 18 U.S.C. § 4042 requires the Bureau of Prisons to provide him with over-the-counter medications without charge if a doctor says that he needs them. He does not allege that the medications are unavailable. The undisputed facts establish that Davis has resources from which he can pay for medications. Davis says that he is not raising a constitutional issue but is challenging the statutory authority of the Bureau of Prisons to require him to purchase over-the-counter medications that he needs. The statute provides, in pertinent part:

The Bureau of Prisons, under the direction of the Attorney General, shall--

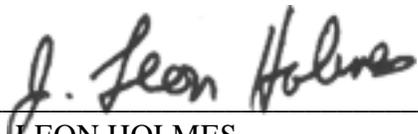
- (1) have charge of the management and regulation of all Federal penal and correctional institutions;
- (2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States[.]

18 U.S.C. 4042(a). Congress has given the Bureau of Prisons broad discretion to determine the means for executing the duties imposed in 18 U.S.C. § 4042. *Montez ex rel. Estate of Hearlson v. United States*, 359 F.3d 392, 396 (6th Cir. 2004). Requiring prisoners who can afford to do so to pay for over-the-counter medications is within the discretion of the Bureau of Prisons.

Defendant Outlaw's Motion for Summary Judgment (docket entry #23) is GRANTED. Plaintiff's claims are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 27th day of October, 2009.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE