

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

GREG PEPPER
ADC #079459

PLAINTIFF

V.

2:09CV00037 SWW/JTR

ANDREW L. CLINKSCALE,
Corporal, East Arkansas Regional Unit, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Susan Webber Wright. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

I. Discussion

In March of 2009, Plaintiff Greg Pepper, who is currently incarcerated in the East Arkansas Regional Unit of the Arkansas Department of Correction, commenced this *pro se* § 1983 action alleging that Defendants violated his constitutional rights. *See* docket entry #2. On May 6, 2009, the Court issued a Recommended Partial Disposition suggesting that: (1) Plaintiff be allowed to proceed with his First Amendment retaliation claims against Defendants Clinkscale, Ramsey, and Harriss; and (2) all other claims and Defendants be dismissed, without prejudice, pursuant to the screening function mandated by 28 U.S.C. § 1915A. *See* docket entry #6.

On May 8, 2009, Plaintiff filed a Motion to Dismiss in which he states, without any explanation, that he would like to voluntarily dismiss this action, without prejudice. *See* docket entry #8. Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that a plaintiff may, without the court’s permission, voluntarily dismiss an action “before the opposing party serves either an answer or a

motion for summary judgment.” Service has not yet been ordered upon Defendants. Thus, Plaintiff is entitled to a voluntary dismissal.

II. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. The Court’s May 6, 2009 Recommended Partial Disposition (docket entry #6) be VACATED.

2. Plaintiff’s Motion to Dismiss (docket entry #8) be GRANTED, and this case be VOLUNTARILY DISMISSED, WITHOUT PREJUDICE.

3. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order and Judgment adopting this Recommended Disposition would not be taken in good faith.

Dated this 12th day of May, 2009.


UNITED STATES MAGISTRATE JUDGE