

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

**DAMIAN KIRBY
REG# 04620-061**

PLAINTIFF

v. Case No. 2:11-cv-14-DPM

**T.C. OUTLAW, Warden; HOWARD, Captain;
GARNER, Correctional Officer; HUDDLESTON,
Correctional Officer; KILLINGSWORTH,
Correctional Officer; McINTOSH, Lieutenant;
STEEL, Lieutenant; CHATTERS, Lieutenant;
RICOLCOL, Lieutenant; WHITE, Correctional
Officer; PRUETT, Correctional Officer;
LEATHERS, Correctional Officer;
MAKOOL, Correctional Officer; DAVIS,
Correctional Officer; BROCKWAY, Correctional
Officer; ROTH, Correctional Officer; WARREN,
Correctional Officer; GILLS, Correctional Officer;
HANKS, Correctional Officer; COLEMAN,
Correctional Officer; CLARK, Correctional Officer;
THOMPSON, Correctional Officer; GRADY,
Correctional Officer; HALK, Correctional Officer;
MELVIN, Correctional Officer; ROACH, Dentist;
HOUSTON, Counselor; NORRIS, Case Manager;
VAUGHN, Unit Manager; DOES, Lieutenants,
Correctional Officers, Medical, Warden, Captain,
SIS, Counselors, Case Managers, Unit Managers, etc.,
Federal Correctional Institution, Forrest City, all sued
in their individual and official capacities**

DEFENDANTS

ORDER

The Court has considered Magistrate Judge Jerome T. Kearney's

Proposed Findings and Recommendations, *Document No. 78*, and Damian Kirby's response, *Document No. 80*. Kirby does not object to Judge Kearney's factual or legal conclusions, but asks the Court not to apply the Prison Litigation Reform Act penalties Judge Kearney recommends. *Document No. 80, at 2*. The Court declines this request.

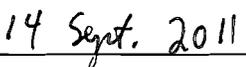
After carefully reviewing the proposal for clear errors of fact on the face of the record, FED. R. CIV. P. 72(b) and Advisory Committee Notes to the 1983 Addition, and for legal error, the Court adopts the proposal in full. Kirby's complaint is dismissed without prejudice. *Motions, Document Nos. 80 & 81*, denied as moot.

An *in forma pauperis* appeal from this order would not be in good faith. 28 U.S.C.A. § 1915(a)(3) (West 2006). This dismissal shall constitute a "strike" within the meaning of 28 U.S.C.A. § 1915(g) (West 2006).

So Ordered.



D.P. Marshall Jr.
United States District Judge



14 Sept. 2011