

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

CHARLES A. WINSTON, ADC #84733

PLAINTIFF

v.

NO: 2:12CV00238 JLH

DEXTER PAYNE, *et al.*

DEFENDANTS

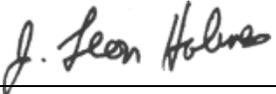
ORDER

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge H. David Young, and the objections filed. After carefully considering the objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects. Winston points out, among other things, that the disciplinary written by Charles Stewart was ultimately reversed. Even so, he has presented no evidence that he was transferred from the East Arkansas Regional Unit to the Varner Unit in retaliation for writing grievances. First, the undisputed evidence shows that ADC Director Larry May instructed Payne to transfer Winston. May is not a defendant and, apart from his unsupported assertion of a conspiracy to cover up the reason for the transfer, Winston presents nothing to show that May did not direct the decision that he be transferred. Secondly, although Winston alleges that the Varner Unit is a punishment unit and is used to house the most violent and unruly inmates, he presents no evidence to show that the Varner Unit is more violent than the East Arkansas Regional Unit or that the inmates at Varner are worse than the inmates at East Arkansas. Although Winston has written many grievances against employees of the ADC, including those at the East Arkansas Regional Unit, he has presented nothing but his own speculation and conjecture to show that he was transferred in retaliation for writing those grievances.

IT IS THEREFORE ORDERED THAT:

1. Defendants' motion for summary judgment (docket entry #26) is GRANTED, and plaintiff's complaint is DISMISSED WITH PREJUDICE.
2. Defendants' motion to strike (docket entry #40) is DENIED AS MOOT.
3. Defendants' counterclaim is DISMISSED WITHOUT PREJUDICE.
4. The Court certifies that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 27th day of March, 2014.



UNITED STATES DISTRICT JUDGE