

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

OSCAR STILLEY
Reg. # 10579-062

PLAINTIFF

v.

CASE NO. 2:15-CV-00163 BSM

UNITED STATES OF AMERICA, et al.

DEFENDANTS


ORDER

The proposed findings and partial recommended disposition (“PRD”) submitted by United States Magistrate Judge Beth Deere [Doc. No. 35] and plaintiff Oscar Stilley’s objections [Doc. No. 40] have been reviewed. After *de novo* review of the record, the PRD is adopted in part and rejected in part. Specifically, Stilley’s claim under the Freedom of Information Act and his claim under the Federal Tort Claims Act arising from his incarceration at FCI Oakdale are dismissed without prejudice because the failure to exhaust administrative remedies does not warrant dismissal with prejudice. *See Barbee v. Corr. Med. Services*, 394 F. App’x 337, 338 (8th Cir. 2010).

The rest of the PRD is adopted in its entirety. Accordingly, Stilley’s motion for partial summary judgment [Doc. No. 29] is denied. The government’s motion to dismiss [Doc. No. 20] is granted in part and denied in part. Stilley may proceed with two of his FTCA claims: 1) his May 15, 2013, battery claim and 2) his claim relating to the denial of prescribed medication at FCI Forrest City. Except for the above-mentioned FOIA claim and the FTCA

claim arising from Stille's incarceration at FCI Oakdale, which are dismissed without prejudice, Stille's remaining claims are dismissed with prejudice,

IT IS SO ORDERED this 3rd day of October 2016.


UNITED STATES DISTRICT JUDGE