

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

JOHN J. SMITH, ADC #154230

PLAINTIFF

v.

Case No. 2:20-cv-00009-KGB-JJV

JEREMY ANDREWS, et al.

DEFENDANTS

ORDER

Before the Court are the Proposed Findings and Recommendations submitted by United States Magistrate Judge Joe J. Volpe on January 6, 2021 (Dkt. No. 35). Plaintiff John J. Smith filed his first set of objections to Judge Volpe's Proposed Findings and Recommendations on January 21, 2021 (Dkt. No. 37). On August 16, 2021, the Court granted Mr. Smith's motion for an extension of time to file additional objections to Judge Volpe's Proposed Findings and Recommendations (Dkt. No. 45). Mr. Smith filed amended objections on August 26, 2021 (Dkt. No 47).

After a careful review of the Proposed Findings and Recommendations, Mr. Smith's objections, and a *de novo* review of the record, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in part as this Court's findings (Dkt. No. 35).

The Court writes to address briefly Mr. Smith's objections. The Court understands Mr. Smith's arguments as to why he was unable to exhaust initially the Arkansas Department of Corrections grievance procedure due to his medical treatment in a separate facility. Ultimately, the Court agrees with Judge Volpe that, without deciding whether Mr. Smith's incapacity made administrative remedies unavailable for a period of time, the grievances Mr. Smith did ultimately file did not specifically name defendants or raise the claims pursued in this lawsuit, and one

grievance was not properly appealed. Further, defendants did not by-pass these procedural flaws to reach the merits of Mr. Smith's grievances or claims. Mr. Smith has not adequately addressed or explained these shortcomings with the grievances he did file. The Court approves of and adopts this reasoning from the Proposed Findings and Recommendations, and this reasoning is sufficient to resolve this dispute as to exhaustion. The Court goes no farther.

Accordingly, the Court grants defendants Andrews, Dycus, Branch, Munn, Kelley, and Golatt's motion for summary judgment (Dkt. No. 31). The Court dismisses without prejudice Mr. Smith's claims against defendants Andrews, Dycus, Branch, Munn, Kelley, and Golatt. Therefore, the Court dismisses without prejudice Mr. Smith's complaint and amended complaint (Dkt. Nos. 1, 5). Mr. Smith's pending motion for subpoenas and motion to compel are denied as moot (Dkt. Nos. 39, 44).

It is so ordered this 30th day of September, 2021.



Kristine G. Baker
United States District Judge