

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

BARRY G. AARON,
ADC #97176

PLAINTIFF

v.

4:08CV04128GTE/HLJ

BRENT HALTOM, et al.

DEFENDANTS

ORDER

This matter is before the court on plaintiff's motion to proceed with his case (DE #13).

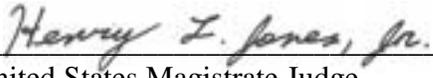
By Order dated November 13, 2008 (DE #3), this Court granted plaintiff's application to proceed in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983. However, the Court dismissed plaintiff's injunctive relief action seeking production of DNA evidence from his 1991 criminal case, for failure to state a claim (DE #5). Upon plaintiff's motion for reconsideration, the Court noted the circuits are split over whether a convicted person has a constitutional right to post-conviction access to forensic evidence for DNA testing purposes that may be enforced under section 1983. Also noting that the issue has not been addressed by the Eighth Circuit Court of Appeals, the Court granted plaintiff's motion for reconsideration, vacated the November 14, 2008 Order of dismissal, and remanded the action to the Undersigned for further proceedings.

Based on the Order granting the motion for reconsideration, the Court finds plaintiff's present motion to proceed should be granted and summons and service on the defendants should be issued. Accordingly,

IT IS, THEREFORE, ORDERED that plaintiff's motion to proceed with his case (DE #13) is hereby GRANTED. Service is appropriate for the defendants Brent Haltom and J. R. Howard. The Clerk of the Court shall prepare summons for the defendants and the United States Marshal is hereby directed

to serve a copy of the complaint and the December 1, 2008 Order (DE ##2, 10) and summons on defendants without prepayment of fees and costs or security therefore.

IT IS SO ORDERED this 5th day of February, 2009.


United States Magistrate Judge