

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

JULIAN WILLIAMS,
ADC #150663

PLAINTIFF

v.

No. 4:12CV00771 JLH-JTK

COLBY SMITH, et al.

DEFENDANTS

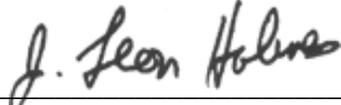
ORDER

Julian Williams was granted leave to proceed *in forma pauperis* and has filed a complaint in which he alleges that on November 24, 2012, he “was given a dinner tray that was unsanitary and contaminated with hair in it.” He alleges that he complained to defendants Jared Smith and Colby Smith, and they asked him to remove the hair and take the tray anyway or sign a refusal and go to segregation. United States Magistrate Judge Jerome T. Kearney has recommended that the Court dismiss the claim for failure to state a claim upon which relief can be granted in exercise of the screening required by the Prison Litigation Reform Act, 28 U.S.C. § 1915A. The time for objecting has expired, and Williams has not objected, though he has requested a continuance on his motion to appoint counsel. He also has filed a grievance form in which he submitted a grievance regarding the incident in question. The fact that food occasionally contains foreign objects, while unpleasant, does not amount to a constitutional deprivation. *Wishon v. Gammon*, 978 F.2d 446, 449 (8th Cir. 1992); *Kunst v. Taylor*, Civ. No. 10-1608 (JBS/AMD), 2012 WL 5451275, at *2 (D.N.J. Nov. 5, 2012); *Baccus v. Florian*, No. 9:12-2440-DCN-BM, 2012 WL 4985243, at *6 (D.S.C. Sept. 21, 2012), quoting *Lemaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993) and collecting cases; *Witte v. Culton*, No. 4:11CV02036 ERW, 2012 WL 2885528, at *4 (E.D. Mo. July 13, 2012); *El-Amin v. Correct Care Solutions*, No. 3:12CV416, 2012 WL 1640791, at *3 (M.D. Tenn. May 9, 2012); *Hall v.*

Busby, No. 3:10CV00082 JMM/JTR, 2010 WL 2541109, at *2 (E.D. Ark. June 4, 2010). In a similar case, the Seventh Circuit said, “[w]hile this surely must have been unappetizing, it comes nowhere close to suggesting that his food was prepared or served under conditions that posed an immediate danger to his health.” *Franklin v. McCaughtry*, 110 Fed. App’x 715, 718, 2004 WL 2202528, at **1 (7th Cir. Sept. 27, 2004). Accordingly, the Court adopts the magistrate judge’s recommendation that the complaint of Julian Williams be dismissed.

IT IS THEREFORE ORDERED that the complaint of Julian Williams is dismissed without prejudice for failure to state a claim upon which relief may be granted. This dismissal is considered a “strike” pursuant to 28 U.S.C. § 1915(g). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order and the accompanying Judgment would be considered frivolous and not in good faith. All pending motions are denied as moot.

IT IS SO ORDERED this 31st day of January, 2013.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE