

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

**ERIC C. BURGIE
ADC #120956**

PLAINTIFF

v.

Case No. 4:14-cv-00181-KBG-HDY

DUSTIN MCDANIEL, ET AL.

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommendations submitted by United States Magistrate Judge H. David Young (Dkt. No. 4) and the objections filed by plaintiff Eric Burgie (Dkt. No. 5). After carefully considering Mr. Burgie's objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

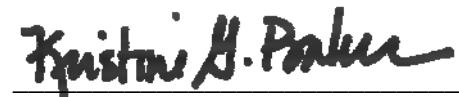
The Court writes separately to address Mr. Burgie's objections. Mr. Burgie argues that the United States Supreme Court's opinion in *Skinner v. Switzer*, 131 S. Ct. 1289 (2011), allows him to bring a due process claim under 42 U.S.C. § 1983 challenging the state's post-conviction procedures. *Skinner* does not address the issue here: whether defendants, Attorney General Dustin McDaniel and Assistant Attorney General Christian Harris, have absolute immunity. As stated in the Proposed Findings and Recommendations, which this Court adopts in full, defendants here are absolutely immune from suit for their actions as advocates for the state in a judicial proceeding. *See Murphy v. Morris*, 849 F.2d 1101 (8th Cir. 1988).

It is therefore ordered that:

1. Plaintiff's complaint is dismissed without prejudice for failure to state a claim upon which relief may be granted.

2. This dismissal counts as a “strike” for purposes of 28 U.S.C. § 1915(g).
3. 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.

SO ORDERED this 3rd day of November, 2014.



Kristine G. Baker
United States District Judge