

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

LEONARD DICKERSON
ADC # 88387

PLAINTIFF

V. 5:07CV00132 WRW

KIM LUCKETT, Warden, Varner Super Max
Unit, Arkansas Department of Correction; GRANT HARRIS,
Warden, Varner Super Max Unit, Arkansas Department of Correction;
GIPSON, Captain, Varner Super Max Unit, Arkansas Department
of Correction ; and RAY HOBBS, Asst. Director,
Arkansas Department of Correction

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge H. David Young and Plaintiff's objections. After carefully considering Plaintiff's objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

IT IS THEREFORE ORDERED that:

1. This action is DISMISSED WITHOUT PREJUDICE, and dismissal of this action shall count as a "strike" for purposes of 28 U.S.C. § 1915(g).¹

¹ Title 28 U.S.C. § 1915(g) provides that: "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted . . ." The Eighth Circuit has held that, if a plaintiff fails to exhaust available administrative remedies before initiating an action in federal court, the complaint fails to state a claim upon which relief may be granted. *Porter v. Fox*, 99 F.3d 271 (8th Cir. 1996); *Sharps v. United States Forest Serv.*, 28 F.3d 815 (8th Cir. 1994).

2. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations would not be taken in good faith.

DATED this 14th day of June, 2007.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE