

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

**CURTIS PITMAN, ADC # 119869;  
and KIARA SMITH, ADC # 107225**

**PLAINTIFFS**

**V. 5:08CV00198 BSM/HDY**

**EDWARD ENGSTROM, Doctor, Maximum Security Unit, Arkansas Department of Correction; FRAZIER, Lt., Maximum Security Unit, Arkansas Department of Correction; BAKER, Captain, Maximum Security Unit, Arkansas Department of Correction; THOMAS, Sgt., Maximum Security Unit, Arkansas Department of Correction; and A. BURTON, CO-II, Maximum Security Unit, Arkansas Department of Correction; LARRY NORRIS, Director, Arkansas Department of Correction; LARRY MAY, Deputy Director, Arkansas Department of Correction; WENDY KELLEY, Deputy Director, Arkansas Department of Correction; JAMES GIBSON, Disciplinary Hearing Administrator, Arkansas Department of Correction; JUSTIN MINOR, Disciplinary Hearing Officer, Arkansas Department of Correction; LORIE TAYLOR, Disciplinary Hearing Officer, Arkansas Department of Correction; KEITH WADDLE, Disciplinary Hearing Officer, Arkansas Department of Correction; CHRIS COODY, Disciplinary Hearing Officer, Arkansas Department of Correction; DAVID WHITE, Warden, Maximum Security Unit, Arkansas Department of Correction; RANDALL MANUS, Deputy Warden, Maximum Security Unit, Arkansas Department of Correction; JEROME T. ADAMS, Major, Maximum Security Unit, Arkansas Department of Correction; JACKIE DAVIS, Captain, Maximum Security Unit, Arkansas Department of Correction; RONALD BAILEY, Lt., Maximum Security Unit, Arkansas Department of Correction; BROOKS, Lt., Maximum Security Unit, Arkansas Department of Correction; LINDA ERWIN, Grievance Officer, Maximum Security Unit, Arkansas Department of Correction; PAMELA CONNER, Grievance Officer, Maximum Security Unit, Arkansas Department of Correction; MONICA CLOIRD, CO-II, Maximum**

**Security Unit, Arkansas Department of Correction; VANITA KING, Classification Officer, Maximum Security Unit, Arkansas Department of Correction; and FAITH WILLOUGHBY, Mental Health Counselor, Maximum Security Unit, Arkansas Department of Correction**

**DEFENDANTS**

**ORDER**

The court has reviewed the proposed findings and recommended partial disposition (Doc. No. 20) 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 partial 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. Plaintiff Kiara Smith's claims be DISMISSED WITH PREJUDICE;
2. This dismissal shall count as a "strike" for purposes of 28 U.S.C. § 1915(g).<sup>1</sup>
3. 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 3rd day of November, 2008.

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<sup>1</sup> 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).

*Brian S. Miller*  

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UNITED STATES DISTRICT JUDGE