

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

**GREGORY GILLIS
ADC #113104**

PLAINTIFF

v.

CASE NO. 5:11CV00295 BSM/JJV

**EDDIE ALLEN, Correctional Officer,
Cummins Unit, Arkansas Department of Correction**

DEFENDANTS

ORDER

The proposed findings and recommended disposition submitted by United States Magistrate Judge Joe J. Volpe [Doc. No. 8] and the filed objections [Doc. No. 9] have been reviewed. After carefully considering these documents and making a *de novo* review of the record, it is concluded that the proposed findings and recommended disposition should be, and hereby are, approved and adopted in their entirety in all respects.

In plaintiff's objection, he sets forth in detail the facts upon which he relies in bringing this case [Doc. No. 9]. The problem with the objection is that it does not address the reason why his case against defendants Allen and Campbell was dismissed. Magistrate Judge Volpe did not find that plaintiff was not beaten by the guards. He simply found that plaintiff failed to sue Allen and Campbell in their individual capacities. Therefore, plaintiff sued them only in their official capacities. Judge Volpe also held that by bringing official capacity claims against Allen and Campbell, plaintiff is in essence suing the state of Arkansas and that the state is immune from suit.

IT IS THEREFORE ORDERED that:

1. Plaintiff's complaint [Doc. No. 2] is dismissed without prejudice for failure to state a claim upon which relief may be granted.

2. Dismissal of Plaintiff's complaint constitutes a "strike" within the meaning of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

3. It is certified, pursuant to 28 U.S.C. § 1915(a)(3) that an *in forma pauperis* appeal would not be taken in good faith.

An appropriate judgment shall accompany this order.

Dated this 26th day of November 2012.


UNITED STATES DISTRICT JUDGE