

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

DUSTIN NELSON
ADC #145488

PLAINTIFF

V.

NO: 5:13CV00092 SWW

MICHAEL DAVENPORT *et al.*

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge H. David Young, and the objections filed. After carefully considering the 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 approved and adopted as to plaintiff's claims against Wood, William, and Allen. As to plaintiff's claim against Davenport, the Court declines to find him liable for excessive force.

The Court finds plaintiff failed to establish that the force applied by Davenport was malicious and sadistic. The facts establish Davenport was reacting to an incident initiated by plaintiff when he head-butted Officer Wood. Plaintiff's leg restraints came off during the struggle to regain control of him and Davenport struck plaintiff while Officer Allen attempted to secured the leg irons. Officer Allen testified that after he got the restraints back on plaintiff, he told Davenport twice to stop striking Plaintiff, which he did after Allen's second order. There is no evidence that Davenport intentionally struck Plaintiff without just cause or reason or that he engaged in extreme or excessive cruelty or delighted in cruelty. He acted in the heat of the incident which quickly was resolved. There is no evidence of any animosity between Davenport and Plaintiff prior to the incident.

IT IS THEREFORE ORDERED THAT Plaintiff's claims against Defendants Eddie Allen,

Jonathan Wood, William Williams, and Michael Davenport are DISMISSED WITH PREJUDICE.

His claims against Defendant Curtis Meinzer are DISMISSED WITHOUT PREJUDICE.

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.

DATED this 6th day of January, 2014.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE