

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

**KENNY COFFEY  
ADC # 86434**

**PLAINTIFF**

**v.**

**5:13-cv-274-DPM-JJV**

**GRANT HARRIS, Warden; JAMES BANKS,  
Warden; MARK CASHION, Warden; KAY HOWELL,  
Warden; DANNY BURL, Warden; JENKINS,  
Classification Officer; CURTIS-TYLER,  
Classification Officer; LISA WALKER, Classification  
Officer; DAVID BREWER, Classification Officer;  
VALARIE WESTBROOK, Classification Officer; and  
RAY HOBBS, Director**


**DEFENDANTS**

**ORDER**

The Court has reviewed Magistrate Judge Joe J. Volpe's Proposed Findings and Recommendations, *No* 3, and Coffey's objections, *No* 4. On *de novo* review, the Court declines to accept the proposal. FED. R. CIV. P. 72(b)(3). Coffey is not a "three-striker" under 28 U.S.C. § 1915(g). Although he accumulated strikes in *Coffey v. Hobbs*, 2:11-cv-172-BSM (E.D. Ark. 6 Sept. 2012), and *Coffey v. Sammons*, 3:01-cv-146-SMR (E.D. Ark. 27 Sept. 2001), his failure to prosecute his action diligently in *Coffey v. Latham*, 3:01-cv-157-SMR (E.D. Ark. 29 March 2002), does not constitute a strike. 28 U.S.C. § 1915(g); *see also, Williams v. Harmon*, 294 F. App'x 243, 245 (8th Cir. 2008)—this

unpublished opinion is the only Eighth Circuit authority on point. It can be relied upon in a bind because it is a 2008 case. FED. R. APP. P. 32.1; 8TH CIR. R. 32.1A.

So Ordered.

  
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D.P. Marshall Jr.  
United States District Judge

3 October 2013