

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

WAIMONUSHUN SMITH
ADC #111026

PLAINTIFF

v.

No. 5:14-cv-71-DPM-JJV

RAY HOBBS, Director, Arkansas Department of
Correction, *et al.*

DEFENDANTS

ORDER

1. On *de novo* review, the Court adopts the recommendation, *No 101*, in large part* and declines it in one respect. Smith's objections, *No 102*, are sustained in one respect and mostly overruled. FED. R. CIV. P. 72(b)(3).

2. The Court declines the recommendation on Smith's as-applied challenge about the July 2012 issue of Ebony. *No 101 at 12*. Without the images, whether this magazine actually violated the ADC's publications policy – or, in the qualified-immunity context, whether Defendants should've known that it clearly didn't – remains a genuine dispute of material fact.

*With one correction: on page 12, the recommendation states that the images for Ebony July 2013 are not available for review; this should refer to the images for Ebony July 2012. *No 72-22 at 4 & 74 at 16*.

3. The Court adopts the remainder of the recommendation and overrules Smith's other objections. The Defendants' motion for summary judgment, *No 71*, is granted in part and denied without prejudice in part. Smith's claims against Hobbs, May, Harris, Smart, Lowe, Jackson, West, Foote, Naylor, Alexander, Scussel, Wheeler, Tyler, and Muselwhite are dismissed without prejudice for failure to exhaust. Smith's claims against Cashion, Falls, and Kerry – except for his as-applied challenge about the Ebony July 2012 issue – are dismissed with prejudice. And Smith's motion for partial summary judgment, *No 76*, is denied.

4. This case is referred back to Magistrate Judge Volpe for further proceedings. Any motion for summary judgment about the one remaining matter must be filed by 31 December 2015.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

23 October 2015