

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

**BILLY MACK NICHOLS, JR.,
ADC #92713**

PLAINTIFF

V.

Case No 5:15-cv-0249-KGB

WILLIE BLAIR, et al.

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommendations (“Recommendation”) submitted by United States Magistrate Judge Jerry Caveneau (Dkt. No. 6). Plaintiff Billy Mack Nichols, Jr., subsequently filed a petition for rehearing (Dkt. No. 9) and a motion to amend petition for rehearing (Dkt. No. 10), both of which this Court construes as objections to the Recommendation. In his petition for rehearing, Mr. Nichols asserts, among other things, that APN Griswold purposefully misdiagnosed him and took away his wheelchair prescription which resulted in internal bleeding in his feet, that APN Bland also purposefully misdiagnosed him and took away medications and/or refused to refill medications resulting in internal bleeding in his feet, and that he cannot add the defendants in this action as defendants in an ongoing previously filed action because he had not exhausted the grievance procedure against these defendants at the time the previously filed action was commenced (Dkt. No. 6). In addition, Mr. Nichols asserts that “at the time he filed his grievances he was under the imminent danger of serious physical injury and . . . should be allowed to proceed with his suit therefore” (Dkt. No. 6).

After careful review of the Recommendation and Mr. Nichols’s timely objections (Dkt. Nos. 6, 9, 10), as well as a *de novo* review of the record, the Court concludes that the Recommendation should be, and hereby is, approved and adopted as this Court’s findings in all

respects. Accordingly, because Mr. Nichols's complaint should be dismissed without prejudice pursuant to the three-strikes provision of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g), his application to proceed *in forma pauperis* is denied (Dkt. No. 1). If Mr. Nichols wishes to continue this case, he should be required to submit the filing and administrative fees of \$400.00 to the Clerk of the Court, noting the above case style number, within 30 days of the date of this Order, along with a motion to reopen the case. Upon receipt of the motion and full payment, this case should be reopened.

The Court denies as moot Mr. Nichols's petition for rehearing (Dkt. No. 9) and his motion to amend petition for rehearing (Dkt. No. 10). The Court has construed these filings as objections to the Recommendation and considered carefully the arguments Mr. Nichols raises in these filings. His arguments do not persuade this Court to reject or modify the Recommendation. Further, the Court denies as moot Mr. Nichols's motion to amend his complaint (Dkt. No. 16) and motion to change venue (Dkt. No. 17). The Court has reviewed these filings to ensure that the points Mr. Nichols attempts to raise do not impact this Court's analysis under the PLRA; these filings also do not persuade this Court to reject or modify the Recommendation. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal of this Order would not be taken in good faith.

It is so ordered this 16th day of December, 2015.



Kristine G. Baker
United States District Court Judge