

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

AARON ANTHONY FLEMONS
ADC # 119749

PLAINTIFF

v.

No. 5:18-cv-73-DPM-JJV

GLEND A BOLDEN, Security Officer,
EARU, ADC; DARYL MORRIS, Security
Officer, EARU, ADC; WENDY KELLEY,
Director, ADC; DAVID KNOTT, Chief of
Security, EARU, ADC; and SYNITREOUS
ROSE, Security Officer, EARU, ADC

DEFENDANTS

ORDER

On *de novo* review, the Court adopts Magistrate Judge Volpe's partial recommendation, *No* 33, and overrules Flemons's objections, *No* 34. FED. R. CIV. P. 72(b)(3). Flemons doesn't object to the recommendation on his motion to voluntarily dismiss. That motion, *No* 30, is granted. Flemons's claims against Defendant Knott are dismissed without prejudice.

On exhaustion, Flemons says he didn't have an "available" remedy within the meaning of the PLRA because he didn't know about Defendants' retaliatory motives until after the fifteen-day grievance window had closed. *No* 31 & *No* 34. But Flemons hasn't shown that Defendants, "through machination, misrepresentation, or intimidation[,]'" prevented him from learning of or deducing a

retaliatory motive sooner. *Ross v. Blake*, 136 S. Ct. 1850, 1860 (2016). And as Magistrate Judge Volpe notes, there is no “special circumstances” exception to the PLRA’s exhaustion requirement. *Ross*, 136 S. Ct. at 1858. Defendants’ motion for partial summary judgment, No 24, is therefore granted. Flemons’s retaliation claims are dismissed without prejudice.

So Ordered.

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

18 September 2018