

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

JAMES MITCHELL MONTGOMERY

PLAINTIFF

v.

Case No. 2:13-CV-02250

ERNIE WITT

DEFENDANT

ORDER

Currently before the Court is the report and recommendations (Doc. 6) filed in this case on December 10, 2013, by the Honorable James R. Marschewski, Chief United States Magistrate Judge for the Western District of Arkansas. Also before the Court are Plaintiff's timely-filed objections (Doc. 7).

The Court has reviewed this case and, being well and sufficiently advised, finds as follows: Plaintiff asserts that he does not want his case to be dismissed and that Defendant did not properly represent him in his criminal case and just took his money and put off his family until the time ran for him to seek a remedy in state court. The issue raised by the Magistrate's report, however, is not whether Defendant may or may not have properly represented Plaintiff during the state court criminal proceedings. The issue raised by the Magistrate was that Plaintiff cannot bring a federal claim, pursuant to 42 U.S.C. § 1983, against an attorney he retained to represent him in connection with a criminal charge. The Court agrees that Plaintiff does not have a claim under § 1983, and the Court can discern no other federal claim or other basis for federal jurisdiction.

The Court finds, therefore, that Plaintiff's objections offer neither law nor fact requiring departure from the report and recommendations. The report and recommendation is proper and should be and hereby is **ADOPTED IN ITS ENTIRETY**. Accordingly, for the reasons stated in the Magistrate's report and recommendations, IT IS ORDERED that Plaintiff's Complaint be

DISMISSED WITH PREJUDICE. The Clerk is directed to place a § 1915(g) strike flag on the case.

Judgment will be entered accordingly.

IT IS SO ORDERED this 13th day of January, 2014.

P. K. Holmes, III

P.K. HOLMES, III
UNITED STATES DISTRICT JUDGE