

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

WILLIE MUNN

PLAINTIFF

V.

CASE NO. 08-4095

SHERIFF BUTCH MORRIS,
Howard County Detention Facility;
JANA TALLANT, Jail Administrator,
Howard County Detention Facility

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed on March 18, 2009 by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 18). On March 23, 2009 the Plaintiff filed Objections to the Report and Recommendation. (Doc. 19 and 21).

On October 15, 2008, Plaintiff filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. In his Complaint, Plaintiff alleges that Defendants have interfered with his legal mail in violation of his Constitutional rights. (Doc. 1). Defendants filed a Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Procedure 12(b)(6). (Doc. 8).

Plaintiff is an inmate in the Arkansas Department of Corrections. On or about September 3, 2008, Plaintiff mailed information to Mr. Madlock—an inmate at another prison. Plaintiff later received a letter from Mr. Madlock informing him that he did not receive the information from Plaintiff because it arrived with insufficient postage, and Mr. Madlock could not pay the 75 cents postage required for delivery. Plaintiff alleges that he would not have sent the information without sufficient postage and that the record of deductions from his prison account establishes that he was

charged for the sufficient amount of postage for the information he sent to Mr. Madlock. Additionally, Plaintiff points out that the information has not been returned to him.

In his report, Judge Bryant found that: 1) Plaintiff has standing to assert this claim; 2) Plaintiff has a First Amendment right to send and receive mail; 3) the fact that the information did not reach its intended recipient was not due to interference on Defendants' part, but instead due to the fact that there was insufficient postage on the mail; and 4) Plaintiff has offered no evidence to support his contention that the amount necessary for correct postage was deducted from his prison account and that this postage was affixed to the information sent to Mr. Madlock. Therefore, Plaintiff has failed to state a claim upon which relief may be granted. Judge Bryant has recommended that Defendants' Motion to Dismiss be granted.

After considering the Plaintiff's Objections and reviewing the record *de novo*, the Court adopts the Magistrate Judge's Report and Recommendation (Doc. 18) as its own. Accordingly, Defendants' Motion to Dismiss (Doc. 8) is hereby **GRANTED**. Plaintiff's claims against all Defendants are hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED, this 10th day of April, 2008

/s/ Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge