

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

ROBERT WILLIAM AVERY

PLAINTIFF

v.

Civil No. 08-5091

SHERIFF KEITH FERGUSON;  
CAPTAIN HUNTER PETRAY;  
CORPORAL DUSTIN CARLTON;  
EX-SERGEANT CHARLES TOMLIN;  
and SGT. CULOTTA

DEFENDANTS

**REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

Plaintiff, who is proceeding *pro se* and *in forma pauperis*, has filed a motion to dismiss (Doc. 87). In the motion, he indicates he wants to dismiss his claims against Defendants Culotta and Carlton. Defendants have orally advised the Court that they have no objection.

I therefore recommend that the motion to dismiss (Doc. 87) be granted and all claims against Corporal Carlton and Sergeant Culotta be dismissed.

**The parties have fourteen (14) days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.**

DATED this 16th day of November 2010.

*/s/ J. Marschewski*

HON. JAMES R. MARSCHEWSKI  
CHIEF UNITED STATES MAGISTRATE JUDGE