

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

ASSEFA GABREL EGZIABHER, JR.

PLAINTIFF

v.

Civil No. 10-5259

CHARLES M. DUELL ET AL.

DEFENDANTS

O R D E R

NOW on this 28th day of January 2011, comes on for consideration the **Magistrate Judge's Report and Recommendation** (Doc. 5) and Defendant's objections thereto (Docs. 7, 8, 9, 10 & 11). The Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff, who is proceeding *pro se*, submitted his complaint for filing on December 28, 2010. On the same day, he submitted an application to proceed *in forma pauperis* ("IFP"). In his complaint, plaintiff states that he is bringing this suit against Charles Duell and Brian Lamb, who were both deputy prosecutors in the Washington County Prosecutor's Office, and against Robert Parks, who is a deputy public defender for Washington County. Plaintiff's allegations relate to his arrest on February 24, 2010, and subsequent prosecution on drug-related charges. Plaintiff brings his case under 42 U.S.C. § 1983

2. As the Magistrate Judge noted in her Report and Recommendation, Defendants Duell and Lamb are prosecuting attorneys in Plaintiff's criminal case and are immune from suit. Further,

public defenders are not state actors under § 1983 and, as such, Plaintiff cannot state a claim against Parks under § 1983.

3. Finally, as the Magistrate Judge noted in her Report, to the extent Plaintiff is asserting a claim for malicious prosecution and/or false imprisonment, those claims do not state a constitutional injury and, thus are not cognizable under § 1983.

4. Plaintiff has filed several objections to the Report and Recommendation but he stated neither law nor fact to refute the findings in the said Report.

IT IS THEREFORE ORDERED that the Plaintiff's objections are **overruled;**

IT IS FURTHER ORDERED that the Magistrate Judge's Report and Recommendation (Doc. 5) is hereby **adopted in toto;**

IT IS FURTHER ORDERED that, for the reasons stated in the Magistrate Judge's Report and Recommendation, Plaintiff's complaint is hereby **DISMISSED**. This lawsuit shall be considered a "strike" pursuant to the so-called three-strikes provision of 28 U.S.C. § 1915 and the Clerk is directed to place an appropriate flag on this case.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
HON. JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE