

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

GRADY LARKIN McGOWAN

PLAINTIFF

v.

Civil No. 12-5190

SERGEANT SKORUP, Transportation,
Benton County Detention Center (BCDC);
SHERIFF KEITH FERGUSON, Benton County;
BILLY BURRIS, Director of the Arkansas State
Hospital; LIEUTENANT CARTER, BCDC; and
CAPTAIN ROBERT HOLLY, BCDC

DEFENDANTS

ORDER

Now on this 14th day of January, 2013, comes on for consideration the **Report and Recommendation of the Magistrate Judge** (document #8), and the objections to the Report and Recommendation (document #10). The Court, being well and sufficiently advised, finds and orders as follows:

1. The plaintiff filed this civil rights action under the provisions of 42 U.S.C. § 1983, proceeding *pro se* and *in forma pauperis*. Pursuant to 28 U.S.C. § 1915(e), the Court has the obligation to screen any complaint filed *in forma pauperis*.

2. In the Report and Recommendation filed December 4, 2012 (document #8), U.S. Magistrate Judge James R. Marschewski, recommends that the claims against Billy Burris, Director of the Arkansas State Hospital, be dismissed as they are frivolous in that the State and its agencies are immune from suit. See Fowler v. Arkansas State Hospital, 2007 WL 990260 (E.D. Ark. 2007).

3. In the plaintiff's objections, he notes that he also intends to sue the defendants in their individual capacities.

4. In section V of the Complaint (document #1), the plaintiff

marks that he is suing the defendants in both their official and personal capacities.

5. The Court, therefore, finds that the Report and Recommendation should be **adopted in part, and denied in part as follows:**

* the Report and Recommendation is adopted to the extent that all official capacity claims against Billy Burris are dismissed for the reasons set forth in the Report and Recommendation. See 28 U.S.C. § 1915(e) (2) (B) (I) - (iii).

* the Report and Recommendation is not adopted with respect to all individual capacity claims against Billy Burris and service of process should proceed against Burris in that regard.

IT IS SO ORDERED.

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