

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

ROBERT W. AVERY

PLAINTIFF

v.

Case No. 5:14-CV-05008

CAPTAIN GUYLL, Jail Administrator, Benton County
Detention Center; SERGEANT SHARP, Benton County
Detention Center; KEEFE COMMISSARY SUPPLY;
UNKNOWN FOOD SERVICE CO.; LIEUTENANT
DARNER, Benton County Detention Center; SERGEANT
HEATH, Benton County Detention Center; DEPUTY
FREE, Benton County Detention Center; DEPUTY LONG,
Benton County Detention Center; DEPUTY THIELE,
Benton County Detention Center; SHERIFF KELLY
CRADDUCK, Benton County; LIEUTENANT
MARTINEZ; CONNECT PHONE SERVICE

DEFENDANTS

ORDER

Currently before the Court are the findings and recommendations (Doc. 18) of the Magistrate. Also before the Court are Plaintiff's timely filed objections (Doc. 22). For the reasons stated below, the Court adopts the Magistrate's recommendations in part.

The Magistrate recommends dismissing Plaintiff's claims regarding inadequacy of the law library, the rates charged for telephone calls, and the rates charged for commissary items at the Benton County Detention Center. As a result, the Magistrate recommends pre-service dismissal of Keefe Commissary Supply and Connect Phone Service as defendants to this case.

As to his claims regarding inadequacy of the law library, Plaintiff claims that he was harmed in not being able to adequately act as his own counsel in various criminal cases pending against him. Plaintiff claims, in particular, that he was not able to find case law cited to by state prosecutors in a "petition to revoke." While not rich in detail, the Court finds that these allegations suffice to defeat

dismissal at this early stage of litigation. The Court therefore declines to adopt the magistrate's recommendation that Plaintiff's claims regarding inadequacy of the law library be dismissed.

As to the rates charged for telephone calls and commissary items, Plaintiff again states that the rates are exorbitant. Plaintiff also cites to certain Arkansas statutes that he alleges have been violated. The Court agrees with the Magistrate that no constitutional violation has been alleged as to these claims, and—assuming that Plaintiff may have some cognizable claim under state law—the Court declines to exercise jurisdiction over any state-law claims now raised in Plaintiff's objections. The Court, therefore, ADOPTS the Magistrate's findings and recommendations as to these claims.

IT IS THEREFORE ORDERED that the Court ADOPTS IN PART the Magistrate's findings and recommendations (Doc. 18) as set forth above. The Court declines to adopt the recommendation that Plaintiff's claim as to inadequacy of the Benton County Detention Center's law library be dismissed. That claim will remain pending. The Court adopts the recommendation that claims regarding exorbitant rates charged for telephone calls and commissary items be dismissed.

As a result, IT IS ORDERED, that Plaintiff's federal claims regarding rates charged for telephone calls and rates charged for commissary items are DISMISSED WITH PREJUDICE as frivolous and for failure to state a claim. Keefe Commissary Supply and Connect Phone Service are therefore DISMISSED as Defendants in this matter.

IT IS SO ORDERED this 2nd day of June, 2014.

P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE