

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

JOE DAVID SMOTHERS

PLAINTIFF

v.

Civil No. 6:08-cv-06024

CHRIS ROOT, Correctional Officer I,  
Ouachita River Correctional Unit;  
J. KING, Inmate, Ouachita River  
Correctional Unit; DALE REED, Warden,  
Ouachita River Correctional Unit; and the  
ARKANSAS DEPARTMENT OF CORRECTION

DEFENDANTS

**REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

Plaintiff, Joe David Smothers (hereinafter Smothers), filed this civil rights action pursuant to the provisions of 42 U.S.C. § 1983 on March 10, 2008. He proceeds *pro se* and *in forma pauperis*. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2007), the Honorable Robert T. Dawson, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation.

Defendants filed a motion to dismiss this action (Doc. 19). On August 22, 2008, I entered an order (Doc. 24) directing Smothers to complete, sign, and return a questionnaire that would serve as his response to the motion to dismiss. On September 2, 2008, Smothers filed a combined response (Doc. 26) and motion to dismiss this lawsuit (Doc. 25).

I recommend that Smothers' motion to dismiss the lawsuit be granted (Doc. 25). **The parties have ten days from receipt of the 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 4th day of September 2008.**

/s/ Barry A. Bryant  
HON. BARRY A. BRYANT  
UNITED STATES MAGISTRATE JUDGE