

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

JASON KELLY FRAZIER

PLAINTIFF

v.

Case No. 11-6054

SGT. WOMBLE, Ouachita River
Correctional Unit (ORCU);
OFFICER JESSE STEARNS, ORCU;
OFFICER PHILLIPS, ORCU; and
OFFICER HATHCOCK, ORCU

DEFENDANTS

ORDER

Now on this 6th day of September 2013, there comes on for consideration the report and recommendation filed herein on August 16, 2013, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 42). Also before the Court are Plaintiff's written objections. (Doc. 43).

The court has reviewed this case *de novo* and, being well and sufficiently advised, finds as follows: The report and recommendation is proper and should be and hereby is adopted in its entirety. Accordingly, Defendants' Motion for Summary Judgment (doc. 30) is GRANTED. Plaintiff's failure to protect claims are DISMISSED WITHOUT PREJUDICE to Plaintiff's right to refile them after exhausting his administrative remedies. Plaintiff's claim that Sergeant Womble failed to properly follow the ADC procedures is DISMISSED WITH PREJUDICE.

It is unclear why Defendants failed to raise Plaintiff's

failure to exhaust in their motion to dismiss early in this litigation despite having pleaded it as an affirmative defense. Defense counsel is admonished that in the future such a defense shall be raised early in the litigation to preserve judicial resources and to avoid needless expenditures by the parties.

IT IS SO ORDERED.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge