

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY GASTON,

Plaintiff,

v.

TOMMY REDMON,

Defendant.

CASE NO. 1:09-cv-01434-AWI-SKO PC

FINDINGS AND RECOMMENDATIONS

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Anthony Gaston ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this Court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On February 11, 2010, the Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A. (Doc. 9.) The Court found that Plaintiff's complaint failed to state any claims upon which relief may be granted under Section 1983. Plaintiff's complaint was dismissed and Plaintiff was given leave to file an amended complaint within 30 days. On March 4, 2010 Plaintiff was granted a thirty (30) day extension of time to file his amended complaint. Plaintiff has not filed an amended complaint.

The February 11, 2010 screening order informed Plaintiff of the deficiencies in his complaint. Plaintiff has not filed an amended complaint and the Court will therefore recommend dismissal of the claims raised in Plaintiff's complaint with prejudice for failure to state a claim upon which relief may be granted. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2007) (recognizing longstanding rule that leave to amend should be granted unless the court determines that the pleading could not

1 possibly be cured by the allegation of other facts); Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir.
2 1987) (pro se litigant must be given leave to amend his or her complaint unless it is absolutely clear
3 that the deficiencies of the complaint could not be cured by amendment).

4 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed for failure to
5 state a claim upon which relief may be granted.

6 These Findings and Recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
8 days after being served with these Findings and Recommendations, any party may file written
9 objections with the Court and serve a copy on all parties. Such a document should be captioned
10 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
11 shall be served and filed within ten (10) days after service of the objections. The parties are advised
12 that failure to file objections within the specified time may waive the right to appeal the District
13 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 **Dated: April 28, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE