

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ANTHONY D. CHERRY,

Plaintiff,

v.

Case No. 6:14-cv-1621-Orl-37TBS

OSCEOLA COUNTY, MITCHEM G.,

Defendant.

ORDER

This cause is before the Court on the following:

1. Third Amended Complaint (Doc. 14), filed December 5, 2014;
2. Affidavit of Indigency (Doc. 15), filed December 5, 2014; and
3. Report and Recommendation of U.S. Magistrate Judge Thomas B. Smith (Doc. 16), filed December 8, 2014.

BACKGROUND

Anthony D. Cherry is a pro se Plaintiff who has repeatedly claimed that Deputy "Mitchem G." of the Osceola County Sheriff's Office violated his civil rights during his arrest on February 17, 2014. (See Docs. 1, 11, 14; see also Doc. 13, p. 3 n.1 (summarizing Plaintiff's prior filings in a related action).) In an Order dated November 18, 2014, the Court dismissed Plaintiff's Second Amended Complaint and denied him leave to proceed *in forma pauperis*. (Doc. 13.) Noting Plaintiff's previous unsuccessful attempts to state a non-frivolous claim, the Court advised Plaintiff that he would be afforded one final opportunity to plead a viable claim. (*Id.* at 4.)

On December 5, 2014, Plaintiff filed a “Thrid [sic] Amended Complaint” (Doc. 14) with a request to proceed *in forma pauperis* (Doc. 15). On referral, U.S. Magistrate Judge Thomas B. Smith issued a Report and Recommendation recommending that the Court deny Plaintiff’s request to proceed *in forma pauperis* and dismiss his Complaint with prejudice. (Doc. 16 (“Report”).) The Court mailed a copy of the Report to Plaintiff, but it was returned as undeliverable. In any case, the time for filing an objection to the Report has passed. See 28 U.S.C. § 636; Local Rule 6.02.

STANDARDS

“A district court must dismiss an action brought *in forma pauperis* upon determining that the action: (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief.” *Bricker v. Cobb Cnty. Gov’t & Pers.*, 399 F. App’x 463, 463 (11th Cir. 2010); see also 28 U.S.C. § 1915(e)(2); Local Rule 4.07(a). “A claim is frivolous if it is without arguable merit either in law or fact.” *McGuire v. Fla. Lottery*, 520 F. App’x 850, 850 (11th Cir. 2013). The district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

DISCUSSION

The Report correctly found that the document labeled “Thrid Amended Complaint” provides no new factual allegations and should be dismissed. (Doc. 16.) Indeed, despite the Court’s plain warning that dismissal with prejudice would result from another inadequate filing, Plaintiff’s most recent pleading merely sets forth his points of disagreement with this Court’s analysis of his Second Amended Complaint. (See Doc. 14.) The document does not include the minimum requirements to state a

“claim for relief” under Federal Rule of Civil Procedure 8(a). (See *id.*) Given Plaintiff’s repeated assertion of frivolous claims and his submission of evidence and allegations establishing that arguable probable cause supported his arrest (see Doc. 14-1), the Court finds that an additional pleading opportunity is not warranted. Rather, the Third Amended Complaint is due to be dismissed with prejudice.

CONCLUSION

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Report and Recommendation of U.S. Magistrate Judge Thomas B. Smith (Doc. 16) is **ADOPTED** and **CONFIRMED**.
2. Pro Se Plaintiff Anthony D. Cherry’s Third Amended Complaint (Doc. 14) is **DISMISSED WITH PREJUDICE**.
3. The Clerk is directed to terminate any pending motions and to **CLOSE** this case.

DONE AND ORDERED in Chambers in Orlando, Florida, on December 31, 2014.



ROY B. DALTON JR.
United States District Judge

Copies:

Counsel of Record

Pro Se Plaintiff

