

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

RUFUS JAMES BROOKS, JR,

Plaintiff,

v.

CASE NO. 1:07-cv-00042-MP-AK

CITY OF GAINESVILLE FLORIDA,  
GAINESVILLE SALVATION ARMY,

Defendants.

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**ORDER**

This matter is before the Court on Doc. 30, Report and Recommendation of the Magistrate Judge, recommending that the complaint be dismissed as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §1915(e)(2), and that the order adopting this report and recommendation direct the clerk of court to note on the docket that this cause was dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii). The time for filing objections has passed, and none have been filed. The Court agrees that Plaintiff does not have the constitutional right to sleep in a cot provided by the Salvation Army. Thus, any claims based on denial of such a right are frivolous. Accordingly, it is hereby

**ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge is adopted and incorporated herein.

2. This case is dismissed with prejudice as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §1915(e)(2), and the Clerk is directed to note on the docket that this cause was dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

**DONE AND ORDERED** this 27th day of May, 2009

*s/Maurice M. Paul*

Maurice M. Paul, Senior District Judge