

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

LAWRENCE BLACK,  
Plaintiff,

vs.

3:08cv525/MCR/MD

CONSIDERATION OF THE  
REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE  
FILED ON 3/19/2008, DONE AND  
ORDERED 17<sup>TH</sup> DAY OF APRIL, 2008,  
Defendant.

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**ORDER and  
REPORT AND RECOMMENDATION**

This cause filed pursuant to Title 42 United States Code Section 1983 is presently before the court on plaintiff's civil rights complaint (doc. 1) and motion to proceed *in forma pauperis* (doc. 5). Good cause having been shown, leave to proceed *in forma pauperis* shall be granted.

Since plaintiff is proceeding *in forma pauperis*, the court may dismiss the case if satisfied that the action is frivolous or malicious. 28 U.S.C. § 1915(e). A complaint is frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S.Ct. 1827, 1833, 104 L.Ed.2d 338 (1989). Section 1915(e) dismissals should only be ordered when the legal theories are "indisputably meritless," *Id.* at 327, 109 S.Ct. at 1833, or when the claims rely on factual allegations that are "clearly baseless." *Denton v. Hernandez*, 504 U.S. 25, 31, 112 S.Ct.

1728, 1733, 118 L.Ed.2d 340 (1992). Upon review of plaintiff's complaint, the court concludes that plaintiff has not presented an actionable claim and that dismissal is therefore warranted.

Plaintiff styles his case as "Lawrence Black Case No: 3:08cv105/MCR vs. "Consideration of the Report and Recommendation of the Magistrate Judge filed on 3/19/2008 done and ordered 17<sup>th</sup> day April, 2008." On page two of the complaint form, he lists the defendant as the Magistrate Judge, "District Court of the Florida Northern District." The statement of facts appears to restate language from orders or other pleadings in the plaintiff's previous case. In its entirety it states as follows:

Upon consideration the magistrate judge on March 19, 2008, and after reviewing objections to report the ordered to dismissed case 3:08cv105/MCR/MD, concluding that plaintiff hade (sic) not presetned an actionable claim, in that the plaintiff did not state his civil rights as rights; under the constitution statement of fact. Miles Davis Judgment April 17, 2008 Document 9 Case 3:08cv00105-MCR-MD. Deputy clerk ordered and adjudged that the plaintiff take nothing and the civil rights case.

(Doc. 1 at 3). In the statement of claim, plaintiff appears to object to the dismissal of his previous case, but lists no specific Constitutional rights, laws or treaties that he alleges have been violated. As relief requested, plaintiff seeks a review of A[dmistrative] O[ffice] perform support functions for the plaintiff," maintains the right to sue any administrative officer for violations of that civil right, and claims the right to sue for information.

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a pleading contain a short and plain statement of the claim showing that the pleader is entitled to relief. There is no discernable claim or basis for relief in plaintiff's complaint. Plaintiff's allegations, as in case 3:08cv105, are virtually indecipherable and contain no identifiable constitutional or statutory violations. Even the relief requested is unclear. To the extent plaintiff seeks to challenge or re-open the court's decision in his previous case, the time has elapsed for him to do so, and in any event, filing a new civil rights complaint is not the appropriate method of securing review of the court's decision in a previous case. This court is satisfied that plaintiff's complaint lacks an arguable basis in law or fact and that the complaint should therefore be dismissed as frivolous under 28 U.S.C. § 1915(e).

Accordingly, it is ORDERED:

Plaintiff's motion to proceed *in forma pauperis* (doc. 5) is GRANTED.

And it is respectfully RECOMMENDED:

That this cause be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

At Pensacola, Florida, this 5<sup>th</sup> day of December, 2008.

/s/ *Miles Davis*

**MILES DAVIS  
UNITED STATES MAGISTRATE JUDGE**

**NOTICE TO THE PARTIES**

Any objections to these proposed findings and recommendations must be filed within ten days after being served a copy thereof. **Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control.** A copy of objections shall be served upon all other parties. Failure to object may limit the scope of appellate review of factual findings. See 28 U.S.C. § 636; *United States v. Roberts*, 858 F.2d 698, 701 (11<sup>th</sup> Cir. 1988).