

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

JOHN D. SOUTER, JR.,

Plaintiff,

v.

Case No.: 3:10cv65/MCR/EMT

WARDEN ELLIS, et al.,

Defendants.

ORDER

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated June 15, 2011 (Doc. 95). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a de novo determination of any timely filed objections.

Having considered the Report and Recommendation, and any objections thereto timely filed, I have determined that the Report and Recommendation should be adopted.

Accordingly, it is now **ORDERED** as follows:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.

2. Defendants' motion for partial dismissal (Doc. 81), construed as a motion for partial summary judgment, is **GRANTED IN PART** to following extent:

a. Plaintiff's claims against Defendants Elva McCaig and Doreen Von Oven are **DISMISSED without prejudice** for failure to exhaust administrative remedies;

b. Plaintiff's claims against Defendants Jack Hammontree, Andrew Williams, Jimmy Johnson, John Holodziej, Christopher Edelen, Steven Thomas, William Johnson, Kyle Hall, James Frizzell, William Weekley, Dennis Wells, Jeffrey Smith, and Kenneth Barnes for their failure to provide a decontamination shower are **DISMISSED**

without prejudice for failure to exhaust administrative remedies;

c. Plaintiff's claims against Defendants David Ellis, Assistant Warden Haas, Assistant Warden Henderson, Dianne Ledkins, and Monroe Barnes are **DISMISSED with prejudice** for failure to state a claim;

d. Plaintiff's claims for monetary damages against all Defendants in their official capacities are **DISMISSED with prejudice** as barred by the Eleventh Amendment; and

e. Plaintiff's claim for declaratory relief is **DISMISSED with prejudice**.

2. That Defendants' motion for partial dismissal (Doc. 81), construed as a motion for partial summary judgment, is otherwise **DENIED** and the following claims against the following Defendants will be permitted to proceed:

a. Plaintiff's Eighth Amendment claim against Defendant Christopher Edelen for the alleged use of excessive force on October 22, 2008; and

b. Plaintiff's Eighth Amendment claims against Defendants Jack Hammontree, Andrew Williams, Jimmy Johnson, John Holodziej, Steven Thomas, William Johnson, Jeffrey Smith, Kyle Hall, James Frizzell, and William Weekley, for failing to intervene or otherwise protect him from Edelen's alleged used of excessive force.

3. That Defendants David Ellis, Assistant Warden Haas, Assistant Warden Henderson, Dianne Ledkins, Monroe Barnes, Dennis Wells, Kenneth Barnes, Elva McCaig, and Doreen Von Oven are **DISMISSED** from this lawsuit.

4. The Defendants against whom claims remain shall have fourteen (14) days from the date of this order in which to file an answer to the plaintiff's complaint.

DONE AND ORDERED this 22nd day of July, 2011.

sl M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE