

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

ROBERT D. KORNAGAY,  
Plaintiff,

vs.

Case No. 3:11cv428/LAC/EMT

SERGEANT GIVEN, et al.,  
Defendants.

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**ORDER**

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated August 1, 2012 (doc. 34). Plaintiff has been furnished a copy of the Report and Recommendation and has 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 the objections filed. Having considered the Report and Recommendation, and the timely filed objections thereto, I have determined that the Report and Recommendation should not be adopted.

The Court finds the allegations against Defendant Officer Smith to be sufficient to state a claim for relief under the Eighth Amendment. While Plaintiff may provide little concrete factual information to show how Defendant Smith may have responded, or indeed that Smith didn't properly respond after confronting Plaintiff's potentially harmful situation with inmate Pope in his cell, it is clear that Defendant Smith was aware of the danger. The lack of an adequate response to Plaintiff's situation is therefore fairly alleged to be at least partly the result of Defendant Smith's indifference, and while Smith may be able to formally respond that he did take remedial steps sufficient to extricate himself from responsibility for Plaintiff's alleged injuries, that remains to be seen at this stage of the litigation. The Court therefore does not find Plaintiff's claims against Defendant Officer Smith to be subject to dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii).

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

1. The magistrate judge's Report and Recommendation is not adopted by the Court.
2. This case shall be referred to the assigned magistrate judge for further proceedings on Plaintiff's claims.

**DONE AND ORDERED** this 24<sup>th</sup> day of August, 2012.

*s/L.A. Collier* \_\_\_\_\_

**LACEY A. COLLIER**

**SENIOR UNITED STATES DISTRICT JUDGE**