

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

BOBBY L. MAGWOOD,
Plaintiff,

vs.

Case No. 3:12cv140/RV/CJK

KENNETH S. TUCKER, et al.,
Defendants.

ORDER

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated November 14, 2012. (Doc. 10). 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 objections filed.

Having considered the Report and Recommendation, and the timely filed objections thereto (doc. 11), 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. The plaintiff's individual capacity claims against defendants Warden Douglas, Colonel Marinin, Sergeant Matthews and Sergeant Hatfield are DISMISSED WITH PREJUDICE under 28 U.S.C. § 1915(e)(2)(B)(ii) for plaintiff's failure to state a claim upon which relief can be granted.

3. The plaintiff's official capacity claims for damages are DISMISSED WITH PREJUDICE under 28 U.S.C. § 1915(e)(2)(B)(iii) as barred by Eleventh Amendment immunity.

4. The plaintiff's individual capacity claims against defendants Captain Schwartz and Sergeant Boquist for punitive damages are DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1915(e)(2)(B)(ii) for plaintiff's failure to state a claim upon which relief may be granted (plaintiff's failure to allege the requisite physical injury under 42 U.S.C. § 1997e(e)).

5. This matter is referred to the magistrate judge for further proceedings on plaintiff's individual capacity claims for nominal damages against defendants Captain Schwartz and Sergeant Boquist for their alleged violation of plaintiff's First and Eighth Amendment rights on February 21-23, 2011.

DONE AND ORDERED this 28th day of November, 2012.

/s/ Roger Vinson
ROGER VINSON
SENIOR UNITED STATES DISTRICT JUDGE