

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

FERNANDO D. PAYNE,

Plaintiff,

v.

Case No. 3:15cv462/LC/CJK

LARRY R. ASHLEY, et al.,

Defendants.

ORDER

This cause comes on for consideration of the Magistrate Judge's Report and Recommendation dated December 2, 2016 (doc. 26). 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). No objections have been filed.

Having considered the Report and Recommendation, the Court has determined that the Report and Recommendation should be adopted.

Accordingly, it is now ORDERED as follows:

1. The Magistrate Judge's Report and Recommendation (doc. 26) is adopted and incorporated by reference in this order.

2. Plaintiff's First Amendment claims against defendants Hanratty, Foley and

Vaughn are DISMISSED WITH PREJUDICE under 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim on which relief may be granted.

3. Plaintiff's claims against defendant Matthews are DISMISSED WITH PREJUDICE under 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim on which relief may be granted.

4. This case is remanded to the magistrate for further proceedings on plaintiff's overcrowding/unsanitary conditions-of-confinement claim against defendants Lawson, Hanratty, Foley and Vaughn, including the filing of a third amended complaint removing the claims dismissed herein and removing plaintiff's request for injunctive relief and compensatory damages.

DONE AND ORDERED this 5th day of January, 2017.

s/L. A. Collier

LACEY A. COLLIER
SENIOR UNITED STATES DISTRICT JUDGE