

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

JAMES A. WHITTINGTON,  
Plaintiff,

vs.

Case No.: 3:17cv129/MCR/EMT

TRACY NORWOOD,  
Defendant.

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**ORDER**

This cause comes before the Court on consideration of the Chief Magistrate Judge's Report and Recommendation dated March 20, 2017 (ECF No. 4). 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). The Court has made a de novo determination of any timely filed objections. Having fully considered the Report and Recommendation, and any objections thereto timely filed, the Court finds that the Report and Recommendation should be adopted, as modified by this Order.

The Report and Recommendation dismisses the claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. The Court finds that the Complaint should also be dismissed as frivolous, pursuant to § 1915(e)(2)(B)(i), because the Complaint is subject to dismissal for lack of subject

matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). *See e.g., Linge v. State of Georgia, Inc.*, 569 Fed. App'x. 895, 896 (11th Cir. 2014).

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

1. The Chief Magistrate Judge's Report and Recommendation is adopted, as modified, and incorporated by reference in this Order.
2. The Complaint is **DISMISSED** as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), because the Court lacks jurisdiction to consider the claim and pursuant to § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted.
3. All pending motions are **DENIED** as moot.

**DONE AND ORDERED** this 19th day of April 2017.

*M. Casey Rodgers*  
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**M. CASEY RODGERS**  
**CHIEF UNITED STATES DISTRICT JUDGE**