

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JAMES T. MURZIKE,
Plaintiff,

vs.

Case No.: 3:24cv222/TKW/ZCB

C.T. HUGHES, et al.,
Defendants.

ORDER

This case is before the Court based on the magistrate judge's Report and Recommendation (R&R) (Doc. 4) and Plaintiff's objection (Doc. 5). The Court reviewed the issues raised in the objection de novo as required by 28 U.S.C. §636(b)(1) and Fed. R. Civ. P. 72(b)(3), and based on that review, the Court agrees with the magistrate judge's determination that this case should be dismissed without prejudice as malicious and an abuse of process under 28 U.S.C. §1915A(b)(1) based on Plaintiff's failure to accurately disclose his litigation history. *See Burrell v. Warden*, 857 F. App'x 624, 625 (11th Cir. 2021) ("An action is malicious when a prisoner misrepresents his prior litigation history on a complaint form requiring disclosure of such history and signs the complaint under penalty of perjury....").

The Court did not overlook Plaintiff's argument that he did not have the case numbers for the two undisclosed cases identified by the magistrate judge when he filed the complaint in this case. However, that argument is belied by the fact that

Plaintiff stated in the objections he filed in the undisclosed cases that he received the R&Rs in those cases on May 14, 2024, *see* Case No. 3:24cv196, ECF No. 6, at 1; Case No. 3:24cv197, ECF No. 5, at 1, which is the day before he filed the complaint in this case, *see* Doc. 1 at 1, 33, 34 (indicating that Plaintiff provided the complaint in this case to prison officials for mailing on May 15, 2024). Moreover, even if Plaintiff did not have the case numbers in those cases, he knew that he filed them and he could have referred to them in some other way (e.g., by title, date of filing, etc.) on the complaint form in this case.

Accordingly, it is **ORDERED** that:

1. The magistrate judge's R&R is adopted and incorporated by reference in this Order.
2. This case is **DISMISSED without prejudice** as malicious and an abuse of process under 28 U.S.C. § 1915A(b)(1).
3. All pending motions are **DENIED as moot**.
4. The Clerk shall enter judgment in accordance with this Order and close the case.

DONE and ORDERED this 14th day of June, 2024.



T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE