

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

RICKY SWEET,

Plaintiff,

v.

CASE NO. 4:07-cv-00484-MP-AK

HENRY BOYD,

Defendant.

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ORDER

This matter is before the Court on Doc. 34, the Report and Recommendation of the Magistrate Judge, recommending that summary judgment be entered against Plaintiff and that the Court certify, pursuant to Florida Statute §944.279(1), that Plaintiff knowingly brought false information before the Court. The Plaintiff filed objections, Doc. 35, which the Court has reviewed.

The Plaintiff claims that in February of 2007, after he had filed several grievances in December 2006 and January 2007, Assistant Warden Henry Boyd made various threats in retaliation for these grievances. The defendants, however, have produced the grievance logs and the testimony of a Management Analyst who reviewed the grievance records. The records reveal that no grievances were filed by Plaintiff between May 2006 and September 2007.

Plaintiff did not discuss or explain this lack of grievance records either in his original motions and responses or in his objections to the Report and Recommendation. Moreover, Plaintiff did not attempt to introduce any of these grievances on his own, or explain why he could not produce them, despite being given notice that the Court was considering certifying that

he submitted false information to the Court.

The Court therefore agrees with the following language from the Report and Recommendation:

Plaintiff's history of the events is not supported by any evidence. He complains that his grievance writing in December 2006 and January 2007 was the cause for Defendant's retaliation. In his letter to the Florida Supreme Court, (doc. 30, exhibit A), written on September 11, 2007, Plaintiff states that he wrote over 20 grievances on Defendant Boyd. He has provided none of these to this Court. In fact, the evidence provided by the Defendant, which Plaintiff does not address and explain, establishes that he filed **no** grievances against Defendant Boyd for months prior to the alleged incident. Plaintiff's grievance about the food menu, which was, according to Plaintiff, the catalyst for the retaliation, was filed **seven** months **after** the alleged incident. Although Plaintiff alleges that he was so in fear of retaliation that he was unable to sleep and had severe stomach problems, he also waited **seven** months after the alleged threat to file a grievance of reprisal. Plaintiff's motive in contriving this lawsuit is perplexing in light of the fact that he has **never** been transferred and remains at Wakulla to this day. Assessing the bare facts, it appears that one Saturday for lunch Plaintiff wanted cole slaw and got salad instead, and he determined to create from this frivolous event a retaliation claim that would garner some attention from the Court.

Based on the utter lack of evidence to support his claim, other than his self-serving and factually dis-proven affidavit, the Court finds that summary judgment should be entered against Plaintiff.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. The Report and Recommendation of the Magistrate Judge is adopted and incorporated herein.
2. Defendant's Motion for Summary Judgment (Doc. 27) is **GRANTED**, Plaintiff's motion for summary judgment (Doc. 25) is **DENIED**, and the complaint (Doc. 1) is **DISMISSED** for failure to state a claim upon which relief may be granted and as frivolous and malicious pursuant to 28 U.S.C. § 1915(e)(2).
3. The clerk of court is directed to note on the docket that this cause was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) and constitutes a "strike" within the meaning of 28 U.S.C. §1915(g).
4. The Court also hereby finds that Plaintiff knowingly brought false information

before the Court, and directs that a copy of this order be sent by certified copy to the Florida Department of Corrections for appropriate disciplinary sanctions pursuant to Florida Statute §944.279(1).

DONE AND ORDERED this 12th day of March, 2010

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge