

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

JOSEPH GARWOOD,

Plaintiff,

v.

CASE NO. 4:08cv235-SPM/WCS

WILLIAM MILLER,

Defendant.

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ORDER

THIS CAUSE comes before the Court on the magistrate judge's report and recommendation (doc. 11) dated October 29, 2008. Plaintiff has filed an objection (doc. 12) pursuant to Title 28, United States Code, Section 636(b)(1). Having considered the objection, I have determined that the report and recommendation should be adopted.

Plaintiff failed to state a valid claim for relief under § 1983. His due process claim is not viable because he did not suffer a cognizable injury, Cannon v. City of West Palm Beach, 250 F.3d 1299, 1302 (11th Cir. 2001), and adequate post-deprivation procedures were available to him, McKinney v. Pate, 20 F.3d 1550, 1560 (11th Cir. 1994). Plaintiff does not have a viable equal protection claim because he fails to allege intentional discrimination. Burton v. City of Belle

Glade, 178 F.3d 1175, 1189-90 (11th Cir. 1999) (intentional discrimination required for equal protection claim when classification is not express); see also Batra v. Bd. of Regents of the Univ. of Neb., 79 F.3d 717, 722 (8th Cir. 1996) (“random government incompetence” is not intentional discrimination). Plaintiff also fails to identify anyone similarly situated who was treated differently. Griffin Industries, Inc. v. Irvin, 496 F.3d 1189, 1207 (11th Cir. 2007) (“To maintain this focus on discrimination and to avoid constitutionalizing every state regulatory dispute, we are obliged to apply the ‘similarly situated’ requirement with rigor.”). Accordingly, it is hereby ORDERED as follows:

1. The magistrate judge’s report and recommendation (doc. 11) is ADOPTED and incorporated by reference in this order.
2. Plaintiff’s third amended complaint (doc. 10) is dismissed with prejudice for failure to state a claim upon which relief may be granted.

DONE AND ORDERED this 4th day of December, 2008.

s/ Stephan P. Mickle

Stephan P. Mickle
United States District Judge