

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

ROLLIE BAKER,

Plaintiff,

v.

CASE NO. 4:08cv277-RH/WCS

JAMES McDONOUGH,

Defendant.

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ORDER OF DISMISSAL

This case is before the court on the magistrate judge's report and recommendation (document 25) and the objections (document 26). I have reviewed *de novo* the issues raised by the objections.

The plaintiff Rollie Baker is an inmate in the Florida Department of Corrections. The Department charged him for photocopies under a practice later held to violate state law. Mr. Baker exhausted his administrative remedies and sued the Department in state court. He lost. He then filed this federal lawsuit against the Secretary of the Department.

The report and recommendation concluded that the case is barred by *res judicata*. That is correct. In his objections, Mr. Baker says the state court got it

wrong, but that of course is no answer to the *res judicata* defense. And Mr. Baker says he should be free to pursue his federal claims in federal court even if the state court ruled against him—in effect, that *res judicata* should not apply in federal court based on a state court’s rejection of a federal claim. But the law is to the contrary. A state court’s ruling on the merits forecloses a federal claim when, as here, the *res judicata* prerequisites are met.

It bears noting, too, that even without *res judicata*, *Mr. Baker* would be unable to obtain the relief he seeks in this court. A claim in federal court for an award of money payable from the state treasury is barred by the Eleventh Amendment. And a claim against a state official in his individual capacity is barred by qualified immunity if it depends on a legal proposition that is not established by clearly settled law.

In sum, if Mr. Baker was improperly charged for photocopies and was entitled to a refund, his remedy was in state court. He brought a claim there but lost. He is not entitled to litigate the claim again in federal court.

One further point deserves mention. In his objections, Mr. Baker asks for a certificate of appealability. A certificate of appealability is required to appeal an adverse decision in a habeas corpus case but not in an ordinary civil case like this one. No certificate of appealability will be granted.

For these reasons,

IT IS ORDERED:

The report and recommendation is ACCEPTED and adopted as the court's opinion. The defendant's motion for summary judgment (document 16) is GRANTED. The clerk must enter judgment stating, "The complaint is dismissed with prejudice." The clerk must close the file.

SO ORDERED on July 25, 2009.

s/Robert L. Hinkle
United States District Judge