

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

JAMES BROWN,

Plaintiff,

v.

CASE NO. 4:09cv455-RH/WCS

FREDRICK B. DUNPHY et al.,

Defendants.

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ORDER OF DISMISSAL

This case is before the court on the magistrate judge's report and recommendation (document 13). The recommendation was for the dismissal of the plaintiff's first amended complaint for failure to state a claim on which relief could be granted. The plaintiff asked for and received an extension of the deadline to file objections, but he filed no objections. Instead, he tendered a second amended complaint. The magistrate judge entered an order noting that the plaintiff had not obtained leave to file the second amended complaint.

As the report and recommendation correctly concluded, the first amended complaint failed to state a claim on which relief could be granted. So does the second amended complaint. A parole-eligible prisoner may assert a claim under 42

U.S.C. § 1983 alleging that the state's parole procedures violate federal law. *See, e.g., Wilkinson v. Dotson*, 544 U.S. 74, 125 S. Ct. 1242, 161 L. Ed. 2d 253 (2005); *Hutcherson v. Riley*, 468 F.3d 750, 754 (11th Cir. 2006). But a prisoner cannot proceed on a federal § 1983 claim alleging no more than generalized bias in parole determinations, especially when he alleges no affect on his own parole determination. And a state official has Eleventh Amendment immunity from a claim in federal court seeking injunctive relief on the basis of a violation of *state* law. *See, e.g., Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 121, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984).

For these reasons and those set out in the report and recommendation,

IT IS ORDERED:

The report and recommendation is ACCEPTED. Leave to file the second amended complaint is DENIED. The clerk must enter judgment stating, "The first amended complaint is dismissed under 28 U.S.C. § 1915(e)(2)(B)." The clerk must close the file.

SO ORDERED on August 23, 2010.

s/Robert L. Hinkle
United States District Judge