

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

JOHN BAILEY,

Plaintiff,

v.

CASE NO. 4:11cv304-SPM/WCS

EDWIN BUSS, et al.,

Defendants.

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ORDER

THIS CAUSE comes before the Court on the Magistrate Judge's Order, Report and Recommendation dated June 21, 2011. Doc. 32. Plaintiff has been furnished a copy and has filed objections pursuant to Title 28, United States Code, Section 636(b)(1). Doc. 33. Despite the objections, I have determined that the report and recommendation is correct and should be adopted.

In his objections, Plaintiff argues that instead of dismissing his § 1983 complaint, the Court should treat it as a habeas petition challenging the disciplinary action. Plaintiff's complaint, however, is not on the habeas form and lacks sufficient detail to establish that he raised his federal claims in state court so as to exhaust his remedies, or that he has cause and prejudice to overcome a

procedural default. If Plaintiff wishes to file a habeas petition, he has the opportunity to do so on the proper form since the dismissal here is without prejudice. Accordingly, it is

ORDERED AND ADJUDGED:

1. The Magistrate Judge's Order, Report and Recommendation (doc. 5) is ADOPTED and incorporated by reference in this order.
2. Plaintiff's Motion to proceed in forma pauperis (doc. 2) is denied pursuant to 28 U.S.C. § 1915(g).
3. This case is dismissed without prejudice.
4. The Clerk of Court shall note on the docket that the dismissal is pursuant to 28 U.S.C. § 1915(g).

DONE AND ORDERED this 13th day of July, 2011.

s/ Stephan P. Mickle
Stephan P. Mickle
Senior United States District Judge