

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

NATHANIEL J. BROWN,

Plaintiff,

v.

4:13cv22-WS

SECRETARY, DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation docketed February 8, 2013. See Doc. 8. Among other things, the magistrate judge recommends that the plaintiff's complaint and this case be dismissed for abuse of the judicial process under 28 U.S.C. § 1915(e) and/or as barred by the "three strikes" provision of 28 U.S.C. § 1915(g). The plaintiff has filed objections to the magistrate judge's report and recommendation.

Under penalty of perjury, and knowing that failure to disclose all prior prisoner cases could lead to dismissal of this case, Brown failed to disclose all of his prior prisoner cases when he filed his original complaint. He later submitted two motions (docs. 5 & 7) to amend his complaint, stating that he had not intended to deceive the court but had simply forgotten about two of his prior cases. The two motions to amend

were worded identically but differed slightly in formatting. Although Brown has since explained that he intended to file only one motion to amend, the clerk docketed the two motions as separate motions. The magistrate judge granted the first motion to amend (doc. 5) and now recommends that the second motion be denied.

The magistrate judge also recommends that Brown's motion to proceed *in forma pauperis* be denied. As correctly noted by the magistrate judge, Brown is subject to the PLRA's "three strikes" provision because he has had three or more prior cases dismissed under 28 U.S.C. § 1915(e). Absent payment of the filing fee, Brown may not proceed with this case. Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation (doc. 8) is hereby ADOPTED and incorporated by reference into this order.
2. The plaintiff's second motion to amend (doc. 7) is DENIED as moot.
3. The plaintiff's motion (doc. 2) for leave to proceed *in forma pauperis* is DENIED.
4. The plaintiff's complaint and this action are DISMISSED WITHOUT PREJUDICE under the "three strikes" provision of 28 U.S.C. § 1915(g).
5. The clerk shall enter judgment stating: "All claims are dismissed without prejudice pursuant to 28 U.S.C. § 1915(g)."

DONE AND ORDERED this 28th day of February, 2013.

s/ William Stafford _____
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE