

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

ANTHONY FAILS,

Plaintiff,

v.

CASE NO. 4:13cv456-RH/GRJ

SECRETARY, DEPARTMENT OF  
CORRECTIONS et al.,

Defendants.

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**ORDER DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS***

This case is before the court on the report and recommendation, ECF No. 56, and the objections, ECF Nos. 57 and 58. I have reviewed *de novo* the issues raised by the objections. The report and recommendation concludes that the plaintiff should not be given leave to appeal *in forma pauperis*. That is plainly correct.

The plaintiff has filed at least two notices attempting to appeal to the United States Court of Appeals for the Eleventh Circuit from the magistrate judge's order of September 10, 2013. That order refused to remand the case to state court and refused to appoint an attorney for the plaintiff. The order was not appealable for two reasons: first, a magistrate judge's nondispositive orders are reviewable by the

assigned district judge under Federal Rule of Civil Procedure 72, not directly by the court of appeals; and second, even a district judge's order refusing to remand a case or to appoint an attorney is not a final order that is immediately appealable.

Not surprisingly, the Eleventh Circuit dismissed at least one of the plaintiff's attempted appeals for lack of jurisdiction. *See* ECF No. 55.

Whether any other appeal is still pending may be unclear. I treated the plaintiff's first notice of appeal, ECF No. 17, as a Rule 72 objection. The notice did not mention the Eleventh Circuit, and I thus reasonably construed the notice as seeking review by the appropriate method—that is, review by the district judge under Rule 72. The plaintiff has made two other filings that perhaps constitute notices of appeal. These are ECF No. 24 (denominated a “second” notice of appeal and dated October 7, 2013) and ECF No. 29 (a letter with an attached notice of appeal dated October 4, 2013). The Eleventh Circuit's dismissal, ECF No. 55, may have been effective to dismiss all pending appeals. If not, the Eleventh Circuit will dismiss any remaining appeal in due course. The Eleventh Circuit has no jurisdiction over any purported appeal of the magistrate judge's nonappealable order, and that will remain true no matter how many notices of appeal the plaintiff files.

For these reasons,

**IT IS ORDERED:**

The report and recommendation is ACCEPTED and adopted as the court's opinion. The motion for leave to appeal in forma pauperis, ECF No. 49, is DENIED.

SO ORDERED on December 30, 2013.

s/Robert L. Hinkle  
United States District Judge