

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

CONRAAD HOEVER,

Plaintiff,

v.

Case No. 4:14cv273-MW/CAS

KEVIN HAMPTON,

Defendant.

_____ /

**ORDER ACCEPTING
REPORT AND RECOMMENDATION**

This Court has considered, without hearing, the Magistrate Judge's Third Report and Recommendation, ECF No. 54, and has also reviewed *de novo* Plaintiff's objections to the report and recommendation, ECF No. 56. Accordingly,

IT IS ORDERED:

The report and recommendation is **accepted and adopted**, over Plaintiff's objections, as this Court's opinion. Defendant Hampton's motion for summary judgment, ECF No. 49, is **DENIED** as to Plaintiff's First Amendment claim because there is a genuine dispute of material fact and on the basis of qualified immunity. However, Defendant's motion for summary judgment is **GRANTED** as to Plaintiff's requests for monetary damages above nominal damages, and Plaintiff's request for declaratory and injunction relief. This case is **REMANDED** to the Magistrate Judge for further proceedings prior to setting it for trial.

In so ruling, this notes that Plaintiff can either pursue his claim for nominal damages or this Court can dismiss the claim without prejudice and he can pursue a claim for monetary damages above nominal damages if the applicable statute of limitations has not run at the time of his release from prison. Defendant is not scheduled to be released from prison until 2023 and thus it would appear that such a dismissal would effectively be with prejudice inasmuch as the statute of limitations will have undoubtedly run at the time of his release. However, it's Plaintiff's choice. He can move forward at this time but will be limited to nominal damages or he ask this Court to dismiss without prejudice and he can pursue a claim for monetary damages above nominal damages assuming the statute of limitations has not run. Plaintiff cannot have two bites at the same apple. He must choose. Plaintiff shall file a notice with this Court on or before August 7, 2017, indicating which option he wishes to pursue.

SO ORDERED on July 24, 2017.

s/Mark E. Walker
United States District Judge