

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

LARRY JEROME WILLIAMS,

Plaintiff,

vs.

CASE NO. 5:08-cv-110/RS/WCS

WAYNE BEASLEY and
FRANCIS DAVIS,

Defendants.

ORDER

Before the court is the Magistrate Judge's Report and Recommendation (Doc. 15). Plaintiff has not filed objections, but has filed a Fourth Amended Complaint (Doc. 16).

Plaintiff has been given three opportunities to file a fact-specific complaint that complied with the applicable Federal Rules of Civil Procedure. By an Order dated December 22, 2008, Magistrate Judge Sherrill gave Plaintiff a final opportunity to file a proper complaint. (Doc. 13). Instead of complying with the Magistrate Judge's instructions, Plaintiff opted to again file a factually insufficient complaint. (Doc. 14) As a result, Magistrate Judge Sherrill submitted his Report and Recommendation on January 13, 2009, recommending that Plaintiff's third

amended complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2) and for failing to comply with court orders. (Doc. 15)

Plaintiff did not file any objections to the Magistrate Judge's Report and Recommendation, but instead improperly attempted to file a fourth amended complaint. "A party may amend its pleading once as a matter of course In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(1)-(2). Since Plaintiff failed to file a proper motion for leave to amend and the amended complaint does not specifically address the Report and Recommendation, the fourth amended complaint will not be considered for any purpose.

A party seeking to challenge the findings in a report and recommendation must file "written objections which specifically identify the portions of the proposed findings and recommendation[s] to which objection is made and the specific basis for objection." *Macort v. Prem, Inc.*, 208 F. App'x 781, 783 (11th Cir. 2006) (quoting *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989)). If a party makes a proper specific objection, the district court must conduct a *de novo* review of the portions of the report to which objection is made. *Id.* at 783-84. The remainder of the report is reviewed for clear error. *Id.* at 784. The district court may "accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* at 784. Since no objections

were made, I have reviewed the Report and Recommendation for clear error and have found none.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation is adopted and incorporated by reference in this Order.
2. This case is dismissed without prejudice.
3. The clerk is directed to close the file.

ORDERED on February 13, 2009.

/S/ Richard Smoak

RICHARD SMOAK
UNITED STATES DISTRICT JUDGE