

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORID
PANAMA CITY DIVISION

WARREN OLIVER,

Plaintiff,

v.

5:15cv16–WS/CJK

SGT. GAFFORD, et al.,

Defendants.

ORDER ADOPTING THE MAGISTRATE JUDGE’S
REPORT AND RECOMMENDATION

Before the court is the magistrate judge’s report and recommendation (doc. 4) docketed February 12, 2015. The magistrate judge recommends that this case be dismissed as malicious based upon the plaintiff’s failure to completely disclose his prior litigation history. The plaintiff has filed objections (doc. 5) to the report and recommendation.

The magistrate judge cites three cases that the plaintiff failed to disclose on his civil rights complaint form filed in this case on February 9, 2015. The plaintiff does not dispute that all three *should* have been disclosed. He simply states that he “forgot,” that “he did the best he could without an education,” and that “he is going

threw [sic] mental issues because of the abuse by FDOC officials.” One of the cases “forgotten” by the plaintiff was filed in the Middle District of Florida on December 18, 2014, less than two months before he filed this case. The case in the Middle District remains pending at this time. Another of the “forgotten” cases was originally filed in the Northern District of Florida on October 1, 2014, was soon after transferred to the Middle District of Florida, and was dismissed by the Middle District on November 5, 2014, approximately two months before this case was filed. The third “forgotten” case, while older, was filed on June 7, 2013, less than two years before this case was filed. As the magistrate judge correctly noted: “The recency . . . of these cases belies any claim . . . that [the plaintiff’s] non-disclosure should be excused by memory failure or confusion over the disclosure requirement.”¹ See *Schmidt v. Navarro*, 576 F. App’x 897, 899–900 (11th Cir. 2014) (affirming district court’s dismissal of inmate’s complaint as malicious under 28 U.S.C. § 1915(e)(2)(B)(i) where inmate failed to disclose two prior federal actions on his prisoner complaint form).

The court having concluded that the magistrate judge’s report and

¹ The plaintiff does not contend that he will be precluded from refiling his claims due to the running of the statute of limitations. Indeed, the plaintiff alleges in his complaint that the operative facts took place in 2013–14, well within the limitations period.

recommendation should be adopted, it is ORDERED:

1. The magistrate judge's report and recommendation (doc. 4) is ADOPTED and incorporated into this order by reference.
2. The plaintiff's complaint and this action are DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1915(e)(2)(B)(i) for failure to truthfully and completely disclose prior litigation history.
3. The clerk shall enter judgment stating: "All claims are dismissed without prejudice."

DONE AND ORDERED this 16th day of March, 2015.

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