

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

VICTOR BERNARD LYLES, SR.,	:	
	:	
Plaintiff	:	
	:	
VS.	:	
	:	
DR. DeWAYNE AYERS, <i>et al.</i> ,	:	NO. 1:06-cv-56(WLS)
	:	
Defendants	:	<b><u>RECOMMENDATION</u></b>

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Plaintiff **VICTOR BERNARD LYLES, SR.**, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. Accompanying his complaint is a request for a TRO or preliminary injunction (Tab # 5). In his motion, plaintiff seeks an injunction ordering the defendants to “arrange for an examination and a plan of treatment by a qualified orthopedic surgeon and ... to carry out that plan of treatment.”<sup>1</sup>

A TRO or preliminary injunction is appropriate where the movant demonstrates that: (a) there is a substantial likelihood of success on the merits; (b) the TRO or preliminary injunction is necessary to prevent irreparable injury; (c) the threatened injury outweighs the harm that a TRO or preliminary injunction would cause to the non-movant; and (d) the TRO or preliminary injunction would not be averse to the public interest. *Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001).

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<sup>1</sup> The Court notes that because plaintiff was transferred from Calhoun State Prison on July 28, 2005, his request for a TRO or injunctive relief is now moot as to Dr. Ayers, as this defendant is no longer in a position to provide plaintiff with the relief he is seeking.

At this juncture, the facts have not been sufficiently developed to determine that there is a substantial likelihood that plaintiff will ultimately prevail on the merits. Moreover, the defendants have not had an opportunity to respond to plaintiff's allegations. Accordingly, it is **RECOMMENDED** that plaintiff's motion for a TRO or preliminary injunction be **DENIED**.

Under 28 U.S.C. § 636(b)(1), plaintiff may serve and file written objections to this recommendation with the district judge to whom this case is assigned, within ten (10) days after being served a copy of this order.

**SO RECOMMENDED**, this 9<sup>th</sup> day of May, 2006.

/s/ **Richard L. Hodge**  
RICHARD L. HODGE  
UNITED STATES MAGISTRATE JUDGE