

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

VICTOR BERNARD LYLES, SR., :
: :
Plaintiff :
: :
VS. :
: :
DR. DeWAYNE AYERS, *et al.*, : NO. 1:06-cv-56(WLS)
: :
Defendants : **RECOMMENDATION**

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.”¹

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).

¹ 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 9th day of May, 2006.

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