



*Community Hosp., Inc.*, 826 F.2d 1030, 1032 (11<sup>th</sup> Cir. 1987). Second, the plaintiff must allege that the act or omission was committed by a person acting under color of state law. *Id.*

## **II. STATEMENT AND ANALYSIS OF PLAINTIFF'S CLAIMS**

In his complaint, plaintiff states that he was transferred by the two defendants to Autry State Prison to have a medically ordered x-ray and cat-scan. Plaintiff alleges that the doctor had given him two pints of solution to drink and he, consequently, needed to use the restroom. Plaintiff states that he was forced to use an open restroom and this resulted in him exposing himself, through no fault of his own, to a female cadet. Plaintiff maintains that he was then placed in a cell and Officer Kinne came to give him a disciplinary report and “attempted to verbally abuse him.” Plaintiff alleges that at this time, an unnamed “Cert Team Prison Guard made his way through [defendants] Kinne and Ponteaia” and grabbed plaintiff’s throat and pushed him from his seat into a corner of the cell. Plaintiff alleges that Officers Kinne and Ponteaia saw this physical abuse transpire and did nothing to assist him. Furthermore, plaintiff alleges that Officers Kinne and Ponteaia then refused to follow through on the medical order that he have a cat scan and/or x-ray. Instead, they denied the medical order and returned him to Calhoun State Prison, intentionally delaying his medical treatment.

In a separate Order entered on this same date, the Undersigned has allowed the following two claims to go forward against Officers Kinne and Ponteaia: (1) petitioner’s claim that the defendants failed to assist him while an unnamed officer assaulted him in their presence, and (2) petitioner’s claim that defendants denied him necessary medical tests and delayed his medical treatment. However, petitioner’s claim that Officer Kinne verbally abused him must be dismissed as frivolous. Mere verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of protected liberty interest, or deny a prisoner equal protection of the law. *See Stacey v. Ford*, 554

F. Supp. 8 (N. D. Ga. 1982). For this reason, the Undersigned **RECOMMENDS** that plaintiff's claim of verbal abuse be dismissed.

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 25<sup>th</sup> day of April, 2006.

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

lnb