

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

RANDY D. MITCHELL,

Plaintiff

VS.

Lieutenant FARLEY,

Defendant

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NO. 5:09-cv-212 (HL)

ORDER

Plaintiff **RANDY D. MITCHELL** has filed a motion in which he asks this Court to reconsider its order dated July 14, 2009. The Court’s July 14th order dismissed as frivolous under 28 U.S.C. § 1915(e)(2) plaintiff’s Eighth Amendment claim that he was forced to go to the bathroom in an unflushable toilet located in the yard and was thereafter denied toilet paper.

In his motion to reconsider, plaintiff cites various cases for his position that even a temporary denial of toilet paper and a flushable toilet could constitute an Eighth Amendment violation. The Court nevertheless continues to find that the single three-hour deprivation in the present case is not sufficient to raise a constitutional claim. *See e.g., Cusamano v. Sobek*, 604 F.Supp.2d 416, 488-89 (N.D.N.Y. Jan. 26, 2009) (“[A] mere denial of the toilet paper and soap on several occasions for a few days is, while dismaying and unprofessional, not a denial of ‘the minimal civilized measure of life’s necessities.’”); *Williams v. Campbell*, 2008 WL 2816089, at *7 (E.D.Pa. July 18, 2008) (“[T]he denial of toilet paper for a limited number of days is not sufficient to state a constitutional violation.”); *Ward v. Montana State Prison*, 2008 WL 564692 (D. Mont. Feb. 28, 2008) (no constitutional

violation where inmate was denied flushable toilet for three days because he failed to allege condition put his health and/or safety at risk). Moreover, plaintiff has not alleged that he suffered any physical injury. *See Cooksey v. Hennessey*, 2007 WL 2790365 (N.D. Cal. Sept. 20, 2007) (dismissing a prisoner's section 1983 claim for alleged violations based on inadequate plumbing in his jail cell for failure to allege qualifying physical injury under 42 U.S.C. § 1997e(e), in addition to failure to state a constitutional violation).

In light of the foregoing, plaintiff's motion to reconsider is hereby **DENIED**.

SO ORDERED, this 14th day of August, 2009.

s/ Hugh Lawson

HUGH LAWSON
UNITED STATES DISTRICT JUDGE

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