

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

CECIL HOWARD a/k/a ALONZO
WHITEHEAD,

Plaintiff,

v.

OFFICER BRADDY, et al.,

Defendants.

CIVIL ACTION NO. 5:12-CV-404 (MTT)

ORDER

Before the Court is the Order and Recommendation of Magistrate Judge Stephen Hyles. (Doc. 13). The Magistrate Judge recommends the motion to dismiss by Defendants Bates, Braddy, Dixon, and West be denied. The Magistrate Judge further recommends the motion to remand by Defendants Georgia Department of Corrections and the State of Georgia be denied. However, following a review pursuant to 28 U.S.C. § 1915A and 42 U.S.C. § 1997e(c)(1), the Magistrate Judge also recommends that all of the Plaintiff's claims be dismissed except for his Eighth Amendment cruel and unusual punishment claim against Defendants Braddy, West, and Glenn, and his First Amendment retaliation claim against Defendant Glenn.

The Department of Corrections and the State of Georgia object to the denial of their motion to remand but only to the extent the claims against them are not dismissed on other grounds. (Doc. 14). Neither the Plaintiff nor the other Defendants filed objections to the Magistrate Judge's Recommendation.

The Court has considered the objection and the Magistrate Judge's Recommendation. The Recommendation is **ADOPTED** and made the **ORDER** of this Court. The State of Georgia and the Department of Corrections motion to remand (Doc. 7) is **DENIED** and the motion to dismiss (Doc. 4) by Defendants Bates, Braddy, Dixon, and West is **DENIED**.

However, following a preliminary screening pursuant to 28 U.S.C. § 1915A and 42 U.S.C. § 1997e(c)(1), it is clear the Plaintiff has failed to state a claim for relief against the State of Georgia, Department of Corrections, or GEO. Thus, the State of Georgia, the Department of Corrections, and GEO (to the extent it is a party) are **DISMISSED** from this action. As to the other Defendants, all claims are **DISMISSED** for frivolity or failure to state a claim *except* for the Eighth Amendment cruel and unusual punishment claims against Defendants Braddy, West, and Glenn, and the First Amendment retaliation claim against Defendant Glenn.¹

SO ORDERED, this 30th day of September, 2013.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

¹ Subsequent to the Defendants' motion to dismiss, the Plaintiff in his amended complaint dismissed Defendants Dixon and Bates and added Defendant Glenn. (Doc. 8-1 at 2).