

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

DARNELL NOLLEY,	:	
	:	
Plaintiff,	:	Civil Action
	:	No. 5:15-cv-149 (CAR)
v.	:	
	:	
GREGORY McLAUGHLIN, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER ON REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Currently before the Court are (1) the Report and Recommendation of the United States Magistrate Judge to grant in part and deny in part Plaintiff’s Motion to Amend Complaint and Defendants’ Motion to Dismiss; (2) Defendants’ Motion to Withdraw their Argument related to exhaustion of Plaintiff’s administrative remedies Defendants asserted in their Objection; and (3) Plaintiff’s First and Second Motions for Reconsideration of the Court’s Order denying his request to appoint him an attorney. Defendants’ Motion to Withdraw Argument [Doc. 61] is **GRANTED**, and their objection related to Plaintiff’s exhaustion of administrative remedies of his due process claim is hereby **WITHDRAWN**. Plaintiff’s First and Second Motions for Reconsideration [Docs. 34 and 62] are **DENIED** for the same reasons the Magistrate Judge expressed in its Order [Doc. 28] denying Plaintiff’s original request for counsel. As stated in that Order, “there is no need for Plaintiff to file additional requests for

counsel” because “[s]hould it later become apparent that legal assistance is required in order to avoid prejudice to Plaintiff’s rights, the Court, **on its own motion**, will consider assisting him in securing legal counsel at that time.”¹

The Report and Recommendation recommends denying Plaintiff’s Motion to Amend his Complaint with regard to his claims against Homer Bryson, and his due process claims arising out of his confinement at Valdosta and Ware State Prisons; and granting the Motion with regard to Plaintiff’s due process claims against Defendants Trevonza Bobbitt, S. Henderson, Stephen Bostick, and Dorian Giles at Macon State Prison. Plaintiff filed an Objection [Doc. 57] as to his claims against Homer Bryson; Defendants have not filed an Objection to this part of the Recommendation. Plaintiff contends he has stated a plausible claim for injunctive relief against Homer Bryson, and thus his Motion to Amend should not be denied as futile. The Court disagrees. The allegation that Bryson, in his capacity as the Commissioner of the State of Georgia’s Department of Corrections (GDOC), is legally responsible for the overall operation of the GDOC, is not sufficient to sustain his claim for an order requiring Bryson to release Plaintiff from segregation. As explained in the Recommendation, Plaintiff’s allegations show Bryson is named as a party simply because he holds supervisory position as the Commissioner of the GDOC, and the allegations fail to allege either a personal involvement by Bryson or a causal connection between Bryson and Plaintiff’s continued

¹ Order dated Nov. 11, 2015 [Doc. 28].

confinement. Thus, Plaintiff's Motion to amend his complaint to add these claims must be denied as futile.

The Report and Recommendation also recommends denying Defendants' Motion to Dismiss as to Plaintiff's due process claims relating to his October 2014 disciplinary hearing and his claims for injunctive relief against Defendants McLaughlin and Myrick; and granting the Motion as to (1) Plaintiff's excessive force claims against Defendants McLaughlin, Blakely, Jones, McIntyre, Jackson, Ridley, Eaddie, Cox, and Woolfork, and (2) Plaintiff's failure to provide adequate medical treatment claims against Defendants Haynes and Frazier because he failed to exhaust his administrative remedies. Both Plaintiff and Defendants have filed Objections [Docs. 57 and 59]. This Court has fully considered the record in this case and made a *de novo* determination of the portions of the Recommendation to which Plaintiff and Defendants object. Having done so, the Court finds all Objections to be without merit. Plaintiff and Defendants restate claims and contentions that have been thoroughly and completely addressed in the Recommendation. This Court agrees with the reasoning and conclusions set forth in the Recommendation and needs not restate such reasoning here.

Accordingly, the Magistrate Judge's Report and Recommendation [Doc. 49] is **HEREBY ADOPTED AND MADE THE ORDER OF THE COURT.** Plaintiff's Motion to Amend his Complaint [Doc. 44] is GRANTED IN PART and DENIED IN PART: It is DENIED with regard to his claims against Homer Bryson, and his due process claims

arising out of his confinement at Valdosta and Ware State Prisons; and GRANTED with regard to Plaintiff's due process claims against Defendants Trevonza Bobbitt, S. Henderson, Stephen Bostick, and Dorian Giles at Macon State Prison. Defendants' Motion to Dismiss [Doc. 31] is GRANTED IN PART and DENIED IN PART: It is DENIED as to Plaintiff's due process claims relating to his October 2014 disciplinary hearing and his claims for injunctive relief against Defendants McLaughlin and Myrick; and GRANTED as to (1) Plaintiff's excessive force claims against Defendants McLaughlin, Blakely, Jones, McIntyre, Jackson, Ridley, Eaddie, Cox, and Woolfork, and (2) Plaintiff's failure to provide adequate medical treatment claims against Defendants Haynes and Frazier because he failed to exhaust his administrative remedies. Defendants' Motion to Withdraw Argument [Doc. 61] is **GRANTED**, and Plaintiff's First and Second Motions for Reconsideration [Docs. 34 and 62] to appoint counsel are **DENIED**.

SO ORDERED, this 31st day of August, 2016.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

SSH