

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

JUSTIN CLARK,)
Plaintiff,)
v.) CIVIL ACTION NO. 5:16-CV-95(MTT)
GEORGE IVEY, et al.,)
Defendants.)

)

ORDER

United States Magistrate Judge Stephen Hyles recommends granting the Defendants' motion to dismiss. Doc. 26. The Plaintiff has not objected to the Recommendation.

The Court agrees, for the reasons stated in the Recommendation, that (1) the Plaintiff has failed to state a claim for which relief may be granted against Defendant Ivey for deliberate indifference to medical needs; (2) the Plaintiff has failed to exhaust his administrative remedies for his other claims; and (3) the Court should decline to exercise supplemental jurisdiction over the Plaintiff's state law claims. Dismissal for these reasons would be without prejudice, but because the events underlying the Plaintiff's claims evidently occurred in November of 2014 or earlier,¹ it is likely that the relevant two-year statute of limitations would prevent the Plaintiff from refiling his federal claims, and thus dismissal would be with prejudice. The Eleventh Circuit has stated that "[w]here a more carefully drafted complaint might state a claim, a [pro se] plaintiff must be given at least one chance to amend the complaint before the district court dismisses

¹ The Plaintiff, proceeding pro se, filed his complaint on March 4, 2016. Doc. 1.

the action with prejudice." *Bank v. Pitt*, 928 F.3d 1108, 1112 (11th Cir. 1991), *overruled on other grounds by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541 (11th Cir. 2002).² Accordingly, if the Plaintiff believes he can allege facts sufficient to cure the deficiencies in his complaint, he shall **REDRAFT** his complaint within 14 days.

The Plaintiff is **ORDERED** to redraft his complaint. The redrafted complaint shall contain all of the Plaintiff's allegations. On the question of exhaustion, the Plaintiff shall attach to his complaint any evidence tending to establish that he exhausted his administrative remedies. Therefore, the Recommendation is **REJECTED**.

SO ORDERED, this 26th day of January, 2017.

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

² The Court assumes, without deciding, that this right to amend applies to the claims dismissed for failure to exhaust.