

**In the United States District Court
For the Southern District Of Georgia
Brunswick Division**

FRANKLIN L. WILLIAMS,

Plaintiff,

v.

J.V. FLOURNAY; CMC COUNCIL; UNIT
MANAGER; CASE MANAGER; and
REGIONAL DIRECTOR,

Defendants.

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CIVIL ACTION NO.: 2:16-cv-23

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation, dkt. no. 4, to which Plaintiff filed Objections, dkt. no. 6. Plaintiff also filed a Motion for Leave to Supplement his Complaint. Dkt. No. 5. For the reasons set forth below, the Court **GRANTS** Plaintiff's Motion for Leave to Supplement. Nevertheless, the Court concurs with the Magistrate Judge's Report and Recommendation and **ADOPTS** the Report and Recommendation as the opinion of the Court.

I. Motion for Leave to Supplement the Complaint

Under Federal Rule of Civil Procedure 15(a), a party may amend a complaint "once as a matter of course at any time before a responsive pleading is served." The Eleventh Circuit has made

clear that the Prison Litigation Reform Act ("PLRA") does not change this right to amend. Brown v. Johnson, 387 F.3d 1344, 1349 (11th Cir. 2004) ("We agree with the majority of circuits that the PLRA does not preclude the district court from granting a motion to amend. Nothing in the language of the PLRA repeals Rule 15(a). Because [plaintiff] filed his motion to amend before the district court dismissed his complaint and before any responsive pleadings were filed, [plaintiff] had the right to amend his complaint under Rule 15(a)."). Accordingly, the fact that the Magistrate Judge has already conducted a frivolity review of Plaintiff's Complaint and issued a Report and Recommendation does not deprive Plaintiff of his right to amend. Id. Thus, the Court **GRANTS** Plaintiff's Motion for Leave to Supplement, and Plaintiff's Complaint is hereby deemed amended to include the assertions contained in the Motion for Leave, as well as the exhibits attached thereto.

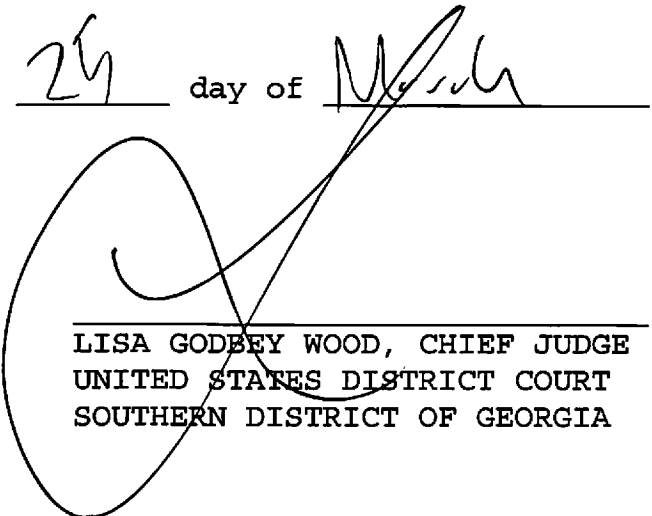
II. The Magistrate Judge's Report and Recommendation

In the Report and Recommendation, the Magistrate Judge concluded that Plaintiff's Complaint is subject to dismissal under the "three strikes" provision of 28 U.S.C. § 1915(g). In reviewing the Report and Recommendation, the Court has conducted a *de novo* review of the entire record. That review has included the assertions contained in the Motion for Leave to Amend which mirror those contained in Plaintiff's Objections. Those

contentions fail to establish that Plaintiff was in imminent danger of serious physical injury at the time he filed his Complaint. Thus, for the reasons stated by the Magistrate Judge, the Court cannot allow Plaintiff to proceed *in forma pauperis* in this cause of action.

Accordingly, the Court **OVERRULES** Plaintiff's Objections and **DISMISSES** Plaintiff's Complaint, without prejudice, pursuant to 28 U.S.C. § 1915(g). The Clerk of Court is **DIRECTED** to enter the appropriate judgment of dismissal and to **CLOSE** this case. The Court **DENIES** Plaintiff leave to proceed *in forma pauperis* on appeal.

SO ORDERED, this 24 day of March, 2016.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA