

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

NOEL ROMERO DOYE,

Plaintiff,

v. 4:08-cv-174

JASON COLVIN, et al.,

Defendant.

ORDER

On March 22, 2011, the Magistrate Judge issued his Report and Recommendation (“R&R”) in this case. *See* Doc. 125. Objections to the R&R were due to be filed on or before April 5, 2011. *See* Doc. 127.

On April 11, 2011, the Court received two motions from Plaintiff: (1) “Motion for Reconsideration of Magistrates [sic] Report and Recommendation,” *see* Doc. 129, and (2) Motion for Extension of Time for Court to Allow His Motion for Reconsideration of Magistrates [sic] Report & Recommendation Be [sic] Accepted as Timely,” *see* Doc. 130. Plaintiff dated his first motion on April 5, 2011, *see* Doc. 129 at 4, and his second motion a day later on April 6, 2011, *see* Doc. 130 at 3.

Although Plaintiff filed his first motion as a request for reconsideration, it is clear that he intended it to serve as his objections to the R&R. The Court construes it as such.

The Court construes Plaintiff’s second motion as a motion for an extension of time in which to file his objections. *See* Doc. 130. But under the prisoner mailbox rule,


Plaintiff’s objections were timely. *See United States v. Carter*, 2011 WL 216138, at *1 (11th Cir. Jan. 25, 2011) (holding that *pro se* prisoners’ filings are filed when delivered to prison authorities for mailing). Therefore, Doye’s second motion, *see* Doc. 130, is **MOOT**.

After a careful *de novo* review of the record in this case, and consideration of Plaintiff’s objections, *see* Doc. 129, the Court concurs with the Magistrate Judge’s Report and Recommendation (“R&R”). *See* Doc. 125.

Accordingly, the R&R is adopted as the opinion of the Court.¹ Defendants’ Motion for Summary Judgment, *see* Doc. 111, is **GRANTED** as to Defendant Franks and **DENIED** as to all other defendants.

The Magistrate Judge ordered Plaintiff to show cause within fourteen (14) days of service of the R&R why the Court should not dismiss Sheriff Martin because of Plaintiff’s failure to timely serve him. *See* Doc. 125 at 17-18. Despite his two post-R&R filings, Plaintiff has failed to respond. Sheriff Martin is **DISMISSED** from this case.

This 12th day of April 2011.


B. AVANT BENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

¹ The R&R notes that Plaintiff paid the filing fee and is not proceeding *pro se*. *See* Doc. 125 at 17. The Court rejects this portion of the R&R and finds that Plaintiff is proceeding *in forma pauperis* and *pro se*. *See* Doc. 1 (*pro se* complaint); Doc. 3 (order granting *in forma pauperis* status).