

FILED
U.S. DISTRICT COURT
WAYCROSS DIV.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

2008 DEC -8 PM 3:29
CLERK R. Oak
SO. DIST. OF GA.

FRANKLIN L. WILLIAMS,)
)
Plaintiff,)
)
v.)
)
MARTIN H. EAVES,)
)
Defendant.)

CIVIL ACTION NO.: CV508-071

ORDER AND MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, an inmate currently incarcerated at Men's State Prison in Hardwick, Georgia, filed a complaint in the Ware County Superior Court. On September 24, 2008, Plaintiff filed a Motion of Removal seeking to proceed in this Court.

The federal removal statute, in pertinent part, provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed *by the defendant or the defendants* to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a) (emphasis added). In accordance with the plain language of this statute, only defendants may remove an action from state to federal court. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 104-05 (1941). The purpose of restricting the right of removal to the defendant is to restrict removal to the party who had no choice in selection of the forum. Plaintiff fails to show any reason why, as a plaintiff, he has any

right to remove this action to federal court. Plaintiff's case should be remanded to the Superior Court of Ware County, as Plaintiff lacks standing to remove under 28 U.S.C. §1441(a).

Accordingly, it is my **RECOMMENDATION** that this action be remanded to the Ware County Superior Court. Plaintiff has filed a Motion for Demand for Jury Trial. That motion is **DISMISSED**.

SO ORDERED and **REPORTED** and **RECOMMENDED**, this 8th day of December, 2008.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE