

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

BAVARIOUS NELSON,

Plaintiff,

v.

JARRELL HART, Warden; Deputy
Warden HOLDEN; Lt. KENNY
COX; Lt. JOHN ANDERSON; and
CERT Officer JOSEPH D. MELTON,

Defendants.

CIVIL ACTION NO.: CV513-009

ORDER

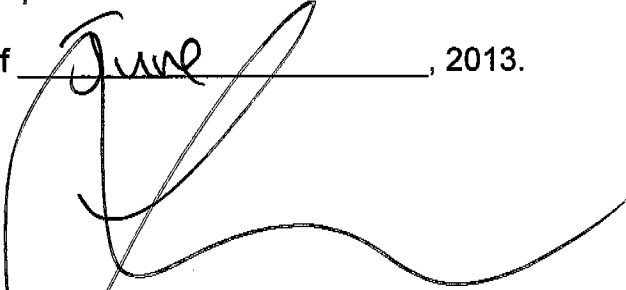
Plaintiff filed a cause of action against the named Defendants pursuant to 42 U.S.C. § 1983. The Magistrate Judge conducted the requisite frivolity review of Plaintiff's Complaint and determined that Plaintiff failed to make any factual allegations in his Complaint against Defendants Hart and Holden. In addition, the Magistrate Judge determined that Plaintiff could not hold Defendants Hart and Holden, who are supervisors at Ware State Prison, liable for the actions of their subordinates based on respondeat superior. Accordingly, the Magistrate Judge recommended that Plaintiff's claims against Defendants Hart and Holden be dismissed. Plaintiff failed to file any objections to the Magistrate Judge's Report and Recommendation, and the undersigned adopted the Magistrate Judge's Report and Recommendation as the opinion of the Court by Order dated March 5, 2013. (Doc. No. 10). Ten (10) days later, Plaintiff filed untimely Objections to the Magistrate Judge's Report and Recommendation.

In his Objections, Plaintiff claims that Warden Hart and Deputy Warden Holden, as well as the Defendants who were served with Plaintiff's Complaint, used excessive force against him. Plaintiff asserts that Warden Hart and Deputy Warden Holden personally participated in the alleged constitutional violations.

Plaintiff raised this assertion for the first time in his Objections. While the Court ordinarily does not entertain contentions first made in a party's objections to a report and recommendation, Williams v. McNeil, 557 F.3d 1287 (11th Cir. 2009), the Court will allow Plaintiff to proceed with his claims against Warden Hart and Deputy Warden Holden, given the liberal standards the Court must apply to pleadings filed by *pro se* plaintiffs. Thus, the undersigned's Order dated March 5, 2013, is **vacated**, and this Order shall take its stead.

Plaintiff's assertions in his Objections arguably state colorable claims for relief, based on his excessive use of force allegations, against Defendants Hart and Holden. A copy of Plaintiff's Complaint, Document Numbered 8, Plaintiff's Objections, and a copy of this Order shall be served upon Defendants Hart and Holden by the United States Marshals Service without prepayment of cost. The Magistrate Judge's service Order dated February 7, 2013, shall govern the parties' actions and course of conduct.

SO ORDERED, this 13 day of June, 2013.



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