

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

LORNE VERNAE STONE,

Plaintiff,

v. 608CV088

HUGH SMITH, TOMMY LEE JONES, and
GILBERT GONZALEZ,

Defendants.

ORDER

This Court recently adopted the magistrate judge's report and recommendation (R&R) denying inmate-plaintiff Lorne Vernae Stone's 42 U.S.C. § 1983 claim in which he alleged deliberate indifference to his medical needs. Doc. # 25. Stone has filed a notice of appeal (NOA) which the Court construes as a motion to appeal *in forma pauperis* (IFP). Doc. # 27.

In his original complaint, Stone alleged that the defendants were part of a broad conspiracy by the Georgia Department of Corrections, "the United States Federal Government, and Organized crime," through which those entities sought "to sterilize [Stone's] reproductive genes." Doc. # 1 at 4. The magistrate judge found that Stone's claims were "too fanciful ... to receive serious attention by a federal court" and recommended that the complaint be dismissed as frivolous. Doc. # 15 at 4. The Court adopted the R&R as its Order on 2/13/09. Doc. # 25.

Three days prior to this Court's adoption Order, Stone submitted an amended complaint. Doc. # 24. Even prisoners, who encounter numerous litigation restrictions under the Prison Litigation Reform Act (PLRA), have the right to amend their complaint under F.R.Civ.P. 15(a), so long as the district court has yet to dismiss the complaint and no responsive pleadings have been filed. *Brown v. Johnson*, 387 F.3d 1344, 1349-50 (11th Cir. 2004). They may exercise this right even after the magistrate judge has

recommended that the case be dismissed. *Id.* Stone filed an amended complaint with this Court prior to the dismissal of his suit and before the filing of any responsive pleading. Thus, the Court should have considered Stone's amended complaint prior to dismissing his case.

Although Stone has abandoned some of the far-fetched conspiracy claims, his amended complaint still contains some claims that might be frivolous. Nevertheless, there are other claims that deserve at least a closer look by this Court before Stone's case is dismissed. Because Stone's NOA has deprived this Court of jurisdiction to take further action in this case, the Court will request that the Court of Appeals remand this case back to the this Court to consider Stone's amended complaint.

In conclusion, the Court instructs the **CLERK** to **FORWARD** this Order to the Eleventh Circuit Court of Appeals, so that it may consider this Court's request for remand. Because the Court should have considered Stone's amended complaint, Stone's IFP motion is **GRANTED**. Doc. # 27.

This 18th day of May 2009.



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