

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

WALLACE GILBERT-MITCHELL, JR.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-cv-0741-MJR
)	
HARLEY G. LAPPIN, et al.,)	
)	
Defendants.)	

MEMORANDUM and ORDER

REAGAN, District Judge:

In this lawsuit, Wallace Gilbert-Mitchell (currently confined at FCI-Terre Haute) alleges numerous violations of his constitutional rights by persons acting under color of federal authority. *See Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Gilbert-Mitchell claims that various Defendants interfered with his access to the courts, denied him medical and mental health treatment, failed to protect him from assault, discriminated against him on the basis of race, denied him visitation, denied him a job assignment and committed other tortious acts involving loss of property.

On August 22, 2008, United States Magistrate Judge Philip M. Frazier denied as moot Gilbert-Mitchell's motion for an order directing Defendants to serve a copy of their motion for reconsideration on him. Gilbert-Mitchell now appeals that denial to the undersigned District Judge.

28 U.S.C. § 636 and LOCAL RULE 72.1 OF THE SOUTHERN DISTRICT OF ILLINOIS authorize United States Magistrate Judges to rule on motions and conduct proceedings in prisoner cases filed under **42 U.S.C. § 1983**. If a Magistrate Judge has ruled on a non-dispositive matter, any

party may file for reconsideration of that ruling within ten days after issuance of the Magistrate Judge's Order. *See* 28 U.S.C. § 636; LOC. RULE 73.1(a).

In the case at bar, Gilbert-Mitchell filed his motion for reconsideration of Judge Frazier's ruling on September 2, 2008. Therefore, the motion is timely filed. Accordingly, this District Judge shall reconsider the matter and set aside any portion of Magistrate Judge Frazier's Order which is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A) (“**A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.**”). The question, then, is whether Judge Frazier's August 22nd Order denying Gilbert-Mitchell's motion for an order directing Defendants to serve a copy of their motion for reconsideration on him was clearly erroneous or contrary to law.

The record before the Court reflects that Defendants properly served their motion for reconsideration on Gilbert-Mitchell. The motion includes Proof of Service, certifying that the motion was mailed to Gilbert-Mitchell at the correct address - Terre Haute Federal Correctional Institution, P. O. Box 33, Terre Haute, Indiana 47808. Moreover, a Notice of Electronic Filing evidencing the filing of Defendants' motion was mailed by the Court to Gilbert-Mitchell at the same address. Gilbert-Mitchell actually filed a timely response to the motion on August 14, 2008. The motion was clearly in his possession because he contended that he wished to oppose it “as it contains wholly erroneous and misleading information.” Doc. 57. Lastly, Gilbert-Mitchell suffered no prejudice because his response will be taken into consideration in ruling on the motion, which remains pending.

Because the record currently before the Court does not indicate that the August 22, 2008 denial of Gilbert-Mitchell's motion was clearly erroneous or contrary to law, the Court **DENIES** Plaintiff Gilbert-Mitchell's appeal (Doc. 62) from Judge Frazier's ruling (Doc. 60).

IT IS SO ORDERED.

DATED this 16th day of September, 2008

s/Michael J. Reagan

MICHAEL J. REAGAN

United States District Judge