

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

STEVEN M. CARTER

CIVIL ACTION

VERSUS

NO: 13-4896

LAFOURCHE PARISH SHERIFF'S
OFFICE ET AL.

SECTION: R(2)

ORDER AND REASONS

Before the Court is Steven Carter's prisoner complaint,¹ his amended complaint,² and the Magistrate Judge's Report and Recommendation that the petition be dismissed with prejudice.³ The Court, having reviewed *de novo* the petition, the record, the applicable law and the Magistrate Judge's unopposed Report and Recommendation, hereby approves the Magistrate Judge's Report and Recommendation and adopts it as its opinion with the addition of the following analysis.

In order to state a claim for damages for inadequate medical care under 42 U.S.C. § 1983, a prisoner must demonstrate that prison officials or other state actors exhibited "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Where a delay in medical treatment is the basis for a claim of inadequate medical care, the plaintiff must not only show deliberate indifference, but also that it resulted

¹ R. Doc. 1.

² R. Doc. 8.

³ R. Doc. 18.

in substantial harm. *Easter v. Powell*, 467 F.3d 459, 461 & n.2 (5th Cir. 2006) (citing *Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993) ("[D]elay in medical care can only constitute an Eighth Amendment violation if there has been deliberate indifference, which results in substantial harm.")). As discussed in the Magistrate Judge's Report and Recommendation, Carter fails sufficiently to allege deliberate indifference.⁴ In addition, he fails to allege that the two- or three-week delay in obtaining surgery resulted in substantial harm. Carter received ongoing medical care during the interim period between the recommendation of surgery and his actual surgery and does not allege substantial harm resulting from the delay or interim treatment. Accordingly, Steven Carter's complaint is DISMISSED WITH PREJUDICE.

New Orleans, Louisiana, this 8th day of November, 2013.

A handwritten signature in black ink, reading "Sarah S. Vance", is written over a horizontal line.

SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

⁴ *Id.* at 12-17.