

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**RONALD HERNDON**

**CIVIL ACTION**

**VERSUS**

**NO. 17-02350**

**ROBERT TANNER, ET AL**

**SECTION "G" (4)**

**ORDER**

On July 26, 2017, the Magistrate Judge recommended that the Court dismiss Plaintiff Ronald Herndon's ("Plaintiff") claims with prejudice as frivolous and otherwise for failure to state a claim for which relief can be granted in accordance with 28 U.S.C. § 1915(e), 28 U.S.C. § 1915A and 42 U.S.C. § 1997e.<sup>1</sup> Pursuant to 28 U.S.C. § 636(b)(1), the parties had fourteen days to file objections to the Report and Recommendation. To date no objections have been filed. Instead, Plaintiff has filed a "Notice," requesting that an attorney be appointed to represent him or that his cases be withdrawn if an attorney cannot be appointed.<sup>2</sup>

The Fifth Circuit has recognized that "[a] district court should appoint counsel in a civil rights case only if presented with exceptional circumstances."<sup>3</sup> A district court should consider four factors in making this determination:

(1) the type and complexity of the case; (2) whether the indigent litigant is capable of adequately presenting his case; (3) whether the litigant is in a position to investigate the case adequately; (4) whether the evidence will consist in large part of conflicting testimony, thus requiring skill in presentation and cross-examination.<sup>4</sup>

Where it is clear that a civil rights claim should be dismissed as frivolous, the district court does

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1 Rec. Doc. 13.

2 Rec. Doc. 14.

3 *Norton v. Dimazana*, 122 F.3d 286, 293 (5th Cir. 1997).

4 *Id.* (quoting *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982)).

not abuse its discretion in denying a motion to appoint counsel.<sup>5</sup>

Here, the Magistrate Judge recommends that the complaint be dismissed as frivolous, and Petitioner has not submitted any objections to the Report and Recommendation. The Court, having considered the complaint, the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge, and the failure of any party to file an objection to the Magistrate Judge's Report and Recommendation, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion in this matter. Moreover, because the Court has determined that the complaint should be dismissed as frivolous, Plaintiff's request for appointment of counsel is denied. Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's request for appointment of counsel is **DENIED**;

**IT IS FURTHER ORDERED** that Ronald Herndon's Section 1983 claims against the defendants, Warden Robert Tanner, Carla Tullos and Major Mizell are **DISMISSED WITH PREJUDICE** as frivolous and otherwise for failure to state a claim for which relief can be granted in accordance with 28 U.S.C. § 1915(e) and § 1915A and 42 U.S.C. § 1997e.

NEW ORLEANS, LOUISIANA, this 1<sup>st</sup> day of September, 2017.

  
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**NANNETTE JOLIETTE BROWN**  
**UNITED STATES DISTRICT JUDGE**

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<sup>5</sup> *Id.*