

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
2009 JAN -7 P 2:43

THEODORE SMITH (#313084)

CIVIL ACTION

VERSUS

NO. 08-30-C

LT. GABRIEL HEBERT, ET AL

BY DEPUTY CLERK

RULING

The court has carefully considered the petition, the record, the law applicable to this action, and the Report and Recommendation of United States Magistrate Judge Docia Dalby dated August 13, 2008. Plaintiff has filed an objection which the court has considered.

The court hereby approves the report and recommendation of the magistrate judge and adopts it as the court's opinion herein.

Accordingly, the defendants' motion for summary judgment is granted, dismissing the plaintiff's claims that he was subjected to an excessive use of force and that excessive force was applied in retaliation for filing an administrative grievance, for failure to exhaust available administrative remedies pursuant to 42 U.S.C. § 1997e(a), and with prejudice to refiling them in forma pauperis status. Further, this matter is referred back to the magistrate judge for further proceedings.

Baton Rouge, Louisiana, January 7, 2009.


RALPH E. TYSON, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA