

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SUGAR RAY LEWIS (#110697)

VERSUS

CIVIL ACTION

BURL CAIN, ET AL

NUMBER 09-126-JJB-SCR

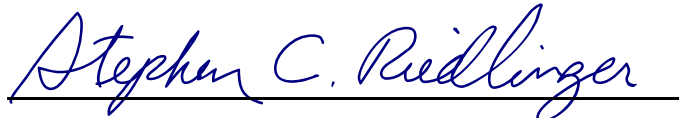
NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the U. S. District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have ten days after being served with the attached report to file written objections to the proposed findings of fact, conclusions of law, and recommendations set forth therein. Failure to file written objections to the proposed findings, conclusions and recommendations within ten days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court.

ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.

Baton Rouge, Louisiana, August 20, 2009.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE

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MAGISTRATE JUDGE'S REPORT

Before the court is the plaintiff's Cross Motion for Summary Judgment. Record document number 11.

Pro se plaintiff, an inmate confined at Louisiana State Penitentiary, Angola, Louisiana, filed this action pursuant to 42 U.S.C. § 1983 against Warden Burl Cain, Sgt. Carlos Pennywell and Sgt. Clarence Harris. Plaintiff alleged that on April 10, 2007, he was attacked by a fellow inmate and was denied medical treatment following the incident in violation of his constitutional rights.

Plaintiff filed his cross motion for summary judgment on May 8, 2009. A review of the record showed that the claims against Warden Burl Cain have been dismissed¹ and defendants Pennywell and Harris have not been served with the summons and complaint.²

Plaintiff's motion for summary judgment is premature. In addition to having failed to serve defendants Pennywell and Harris

¹ Record document number 16.

² Record document number 8.

with the complaint, there is no evidence that they were served with the plaintiff's motion for summary judgment as is required by Rule 56(c), Fed.R.Civ.P.

RECOMMENDATION

It is the recommendation of the magistrate judge that the plaintiff's cross motion for summary judgment be denied, without prejudice.

Baton Rouge, Louisiana, August 20, 2009.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE