

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DONALD PEA (#457171)

VERSUS

N. BURL CAIN, WARDEN, ET AL.

CIVIL ACTION

NO. 12-779-SDD-RLB

RULING

The Court, after carefully considering the *Petition*, the record, the law applicable to this action, and the *Report and Recommendation* of United States Magistrate Judge Richard L. Bourgeois, Jr. dated June 17, 2013, to which no objection has been filed, hereby approves the *Report and Recommendation* of the Magistrate Judge and adopts it as the Court's opinion herein.

ACCORDINGLY, Plaintiff's claims asserted against Defendants, Sgt. R. Frye and Capt. Feisel (or Feasel), are dismissed for failure of the Plaintiff to serve these Defendants within 120 days as mandated by Rule 4(m) of the Federal Rules of Civil Procedure. Further, the *Motion for Summary Judgment* of Defendants, Burl Cain, Joe Lamartiniere, Darrel Vannoy, Troy Poret, Antonio Whittaker, and Geoffery Crosby (Rec. Doc. 9) is GRANTED, dismissing the Plaintiff's claims asserted against these Defendants, without prejudice, for failure of the Plaintiff to exhaust administrative remedies as mandated by 42 U.S.C. § 1997e, but with prejudice to re-assertion of the same claim or claims against these Defendants *in forma pauperis*.

This matter is referred back to the Magistrate Judge for further proceedings in connection with the Plaintiff's claim of excessive force asserted against Defendant, Greg Templeton.

Baton Rouge, Louisiana, July 10th, 2013.


SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA