

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION

MARK ANTHONY ROBICHAUX,  
Plaintiff

CIVIL ACTION  
NO. CV08-0278-A

VERSUS

AVOYELLES CORRECTIONAL CENTER,  
et al.,  
Defendants

JUDGE DEE D. DRELL  
MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

Before the court is a civil rights complaint filed in forma pauperis by pro se plaintiff Mark Anthony Robichaux ("Robichaux") pursuant to 42 U.S.C. § 1983. This matter was referred to the undersigned Magistrate Judge for report and recommendation in accordance with a standing order of this court.

The named defendants are Warden Jeff Windham (warden of the LaSalle Correctional Center ("LCC") in Olla, Louisiana), Warden Jim Sills (warden of J.B. Evans Correctional Center ("JBECC") in Newellton, Louisiana), and Warden Michael Striedel (warden of the South Louisiana Correctional Center ("SLCC") in Basile, Louisiana). In his complaint, Robichaux alleges that, while he was incarcerated at the Avoyelles Correctional Center ("ACC") in Marksville, Louisiana, in 2007, his bottom dentures were taken away from him due to a silver retaining plate in them. Robichaux contends that, when he was transferred to the LaSalle Correctional Center, his bottom dentures were not sent with him and were never returned to him by the ACC. As a result, Robichaux has suffered bleeding and

sore gums. Robichaux further claims he never saw the dentist and his denture was not replaced at any of his subsequent places of confinement, LCC, JBECC, and SLCC. For relief, Robichaux is seeking replacement of his dentures and monetary damages. Robichaux has since been released and is currently residing in Lockport, Louisiana (Doc. 10).

On July 23, 2008, Robichaux was ordered to complete and return summons forms and USM 285 forms to the Clerk of Court for service on the defendants (Doc. 12). As of the date of this Report, Robichaux has not returned the completed summonses and forms for service. Therefore, Robichaux's complaint should be dismissed for failure to comply with an order of this Court. See Rule 41(b) of the Federal Rules of Civil Procedure; Link v. Wabash Railroad Co., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962); Gonzalez v. Trinity Marine Group, Inc., 117 F.3d 894, 898 (5th Cir. 1997).

Moreover, since Robichaux never completed summonses for these defendants, the defendants were never served. Accordingly, the complaint against these defendants should also be dismissed without prejudice for failure to effect service, under Fed.R.Civ.P. 4(m). See McGinnis v. Shalala, 2 F.3d 548, 550 (5th Cir. 1993), cert. den., 510 U.S. 1191, 114 S.Ct. 1293, 127 L.Ed.2d 647 (1994); Systems Signs Supplies v. U.S. Dept. of Justice, 903 F.2d 1011, 1013 (5th Cir. 1990); Kersh v. Derosier, 851 F.2d 1509, 1512 (5th Cir. 1988).

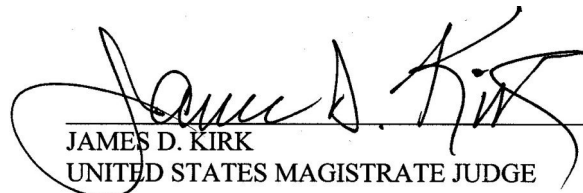
Accordingly,

IT IS RECOMMENDED that Robichaux's complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with an order of this Court and for failure to serve the defendants.

Under the provisions of 28 U.S.C. § 636(b)(1)(c) and Fed.R.Civ.P. 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **ten (10) days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the district judge before he makes a final ruling.

**A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.**

THUS DONE AND SIGNED at Alexandria, Louisiana, on this 29th day of April, 2009.

  
JAMES D. KIRK  
UNITED STATES MAGISTRATE JUDGE