

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONY PENN,

Plaintiff,

vs.

Case No. 11-10800
HON. GEORGE CARAM STEEH

DEPUTY EVANS, et al.,

Defendants.

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ORDER OF CLARIFICATION

This matter came before the court on plaintiff Tony Penn's *pro se* prisoner civil rights complaint pursuant to 42 U.S.C. § 1983. After screening the complaint pursuant to 28 U.S.C. §§ 1915A(b), 1915e(2)(B), and 42 U.S.C. § 1997e(c)(1), Magistrate Judge Binder recommended that the case be *sua sponte* dismissed with prejudice for failure to state a claim. The court accepted the report and recommendation and dismissed plaintiff's case with prejudice. Plaintiff then filed a motion for reconsideration, explaining that he had filed a timely objection to the report and recommendation which was apparently not received by the court and was not made part of the record. The court gave plaintiff until May 19, 2011 to re-file his objections. Objections had not been received as of the morning of May 24, 2011, at which time the court denied plaintiff's motion for reconsideration. Later on May 24, plaintiff's objections were received by the court and docketed.

In his objections, plaintiff seeks liberal review of his pleadings, given his lack of legal knowledge. The court has given consideration to plaintiff's complaint and objections, and notes that plaintiff has not identified the specific conduct of any of the

defendants named in the complaint. Plaintiff has likewise failed to identify the conditions of his confinement, the length of his confinement, and any details about the conditions that would amount to cruel and unusual punishment in light of the fairly obvious reasons for not allowing crutches or wheelchairs in a jail cell. There is a striking absence of pleading in this case. While plaintiff has failed to provide any basis for reconsidering the dismissal of his complaint for failure to state a claim, the court will change the dismissal with prejudice to a dismissal without prejudice given the possibility that a more sufficient pleading could be fashioned.

IT IS HEREBY ORDERED that the dismissal of plaintiff's complaint with prejudice be changed to a DISMISSAL WITHOUT PREJUDICE.

Dated: May 25, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 25, 2011, by electronic and/or ordinary mail and also to Tony Penn at Bellamy Creek Correctional Facility, 1727 West Bluewater Highway, Ionia, MI 48846.

S/Josephine Chaffee
Deputy Clerk