

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

WILLIAM NELSON, III

PLAINTIFF

V.

CIVIL ACTION NO.: 4:16CV158-GHD-DAS

TIMOTHY MORRIS, ET AL.

DEFENDANTS

ORDER OF DISMISSAL

This matter comes before the Court, *sua sponte*, for consideration of dismissal. Plaintiff, an inmate proceeding *pro se* and *in forma pauperis*, filed the instant suit under 42 U.S.C. § 1983 alleging that he was the victim of excessive force by Defendants, all of whom are correctional staff members at the Mississippi State Penitentiary.

Because Plaintiff has been permitted to proceed *in forma pauperis* in this action, his complaint is subject to *sua sponte* dismissal under the Prison Litigation Reform Act (“PLRA”). *See* 28 U.S.C. 1915(e)(2); *see also* 28 U.S.C. § 1915A (subjecting prisoner complaint to preliminary screening regardless of *in forma pauperis* status). Pursuant to the PLRA, the Court is obligated to evaluate the complaint and dismiss it if it is “frivolous or malicious,” if it “fails to state a claim upon which relief may be granted,” or if it “seeks monetary relief against a defendant who is immune from such relief.” § 1915(e)(2).

Plaintiff already has a pending § 1983 action against these Defendants involving the incident of excessive force alleged by Plaintiff in the instant action. *See Nelson, III v. Morris*, 4:16cv127-DMB-JMV, No. 4:16cv127. Because Plaintiff has filed the instant lawsuit raising claims that duplicate his claims in a pending lawsuit, this action is dismissed with prejudice under 28 U.S.C. § 1915 as malicious. *See Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir.

1993); *Marts v. Hines*, 117 F.3d 1504, 1506 (5th Cir. 1997) (noting claim dismissed as malicious under § 1915 should be with prejudice).

SO ORDERED this 18th day of July, 2016.



SENIOR U.S. DISTRICT JUDGE