

that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim on which relief may be granted, the court must deny leave to proceed under section 1915(a). The only exception to the successive petition clause is when the prisoner faces "imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Plaintiff's claims should be dismissed. The court stated, in Clemmons v. Armontrout, 477 F.3d 962, 966 (8th Cir. 2007),

[t]herefore, where no evidence exists that the investigator acted in bad faith or "engaged in a conscious effort to suppress exculpatory evidence," the accused's due process rights have not been violated. Villasana v. Wilhoit, 368 F.3d 976, 980 (8th Cir. 2004) (internal quotations and citation omitted). Likewise, "[n]egligent failure to investigate other leads or suspects does not violate due process." Wilson v. Lawrence County, Mo., 260 F.3d 946, 955 (8th Cir. 2001) (citing Daniels v. Williams, 474 U.S. 327, 334 (1980)). Even allegations of gross negligence fail to establish a constitutional violation. Id. "[O]nly reckless or intentional failure to investigate other leads offends a defendant's due process rights." Id. (emphasis added).

Plaintiff has failed to state a claim under 42 U.S.C. § 1983. Plaintiff is warned that if this case is dismissed as recommended, it will count against her for purposes of the three-dismissal rule set forth in 28 U.S.C. § 1915(g).

IT IS, THEREFORE, RECOMMENDED that plaintiff's claims be dismissed, pursuant to 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted.

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 2nd day of October, 2009, at Jefferson City, Missouri.

/s/ *William A. Knox*

WILLIAM A. KNOX
United States Magistrate Judge