

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

TROY CROCKER,

Plaintiff,

vs.

Civil Action 2:09-CV-927
Judge Frost
Magistrate Judge King

OHIO DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

INITIAL SCREEN OF THE COMPLAINT
AND
REPORT AND RECOMMENDATION

Plaintiff, a state prisoner, brings this action under 42 U.S.C. §1983 alleging that defendants, the Ohio Department of Rehabilitation and Correction ["ODRC"] and the warden of the Chillicothe Correctional Institution ["CCI"], failed to protect plaintiff from an attack by other inmates.¹ This matter is now before the Court for the initial screen of the complaint required by 28 U.S.C. §§1915(e), 1915A.

The Eleventh Amendment to the United States Constitution prohibits this Court from entertaining plaintiff's claim against the defendant state agency. *Regents of Univ. of Calif. v. Doe*, 519 U.S. 425, 429 (1997). It is therefore **RECOMMENDED** that this defendant state agency be dismissed from the action.

At this juncture, plaintiff's claim against the defendant warden can proceed on plaintiff's claim under the Eighth Amendment to the United

¹Plaintiff's affidavit of indigency and the summonses submitted by him also refer by name to the Director of ODRC and the warden of CCI. However, the actual complaint refers only to the state agency ODRC and the "Warden" of CCI. If plaintiff intends to join additional parties, he must file an amended complaint and include a statement of the conduct, on the part of each defendant, about which plaintiff complains.

States Constitution.

Plaintiff must provide a copy of the complaint, a summons and a Marshal service form so that the United States Marshal Service can make service of process on the defendant, who may have 45 days after service to respond to the complaint. Plaintiff is reminded that service of process must be completed within 120 days. Claims against any defendant not so served will be dismissed without prejudice. See F.R. Civ. P. 4(m).

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

October 20, 2009

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge