

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEVIN POWELL,	:	
	:	
Plaintiff,	:	No. 4:CV-07-2225
	:	
v.	:	(McClure, J.)
	:	
DR. JOHN SYMONS,	:	(Smyser, M.J.)
	:	
Defendant	:	
	:	

**ORDER**

October 27, 2008

**BACKGROUND:**

On December 7, 2007, plaintiff Kevin Powell, a federal prisoner filing pro se, commenced this civil action under 42 U.S.C. § 1983. Defendant moved to dismiss the complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), on the grounds that plaintiff failed to state a claim upon which relief may be granted. Additionally, defendant moved to dismiss plaintiff’s request for punitive damages.

The matter was initially referred to United States Magistrate Judge J. Andrew Smyser.

On September 18, 2008, Magistrate Judge Smyser filed a nine-page report and recommendation. (Rec. Doc. No. 53). In his report, the magistrate judge

concluded that: (1) plaintiff stated an Eighth Amendment claim upon which relief could be granted against the defendant; and, (2) plaintiff may be entitled to punitive damages.

Defendant has not filed any objections to the magistrate judge's report and recommendation and the time for doing so has since passed. Because defendant has elected not to object to the report and recommendation and because we agree with the magistrate judge's thorough analysis and recommendation, we will adopt the report and recommendation in full. For the purposes of judicial economy, we will not rehash the sound reasoning employed by the magistrate judge. Therefore, we will deny defendant's motion to dismiss and will remand the case to the magistrate judge for further proceedings.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. United States Magistrate J. Andrew Smyser's Report and Recommendation is adopted in full. (Rec. Doc. No. 53.)
2. Defendant's motion to dismiss is DENIED. (Rec. Doc. No. 15.)
3. The case is remanded to the magistrate judge for further proceedings.

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s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge