

**FILED**

**MARCH 4, 2009**

KAREN S. MITCHELL  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

JOHN D. FAILS, PRO SE,	§	
also known as	§	
JOHN D. FAILS, JR.	§	
also known as	§	
JOHN DANIEL FAILS, JR.,	§	
TDCJ-CID No. 1335587,	§	
Previous TDCJ-CID No. 1330335,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:08-CV-0222
	§	
HERMAN WESTON, JR.,	§	
Senior Warden,	§	
	§	
Defendant.	§	

**ORDER OF DISMISSAL**

Plaintiff JOHN D. FAILS, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-referenced defendant and was granted permission to proceed *in forma pauperis*.

On February 17, 2009, a Report and Recommendation was issued by the United States Magistrate Judge analyzing plaintiff's claims and recommending dismissal with prejudice as frivolous and without prejudice for failure to state a claim on which relief can be granted. The Magistrate Judge further recommended the Court decline jurisdiction of any pendent state law claims and that they be dismissed without prejudice.

Plaintiff filed his Objections on February 25, 2009. By his Objections, plaintiff informs the Court he told defendant WESTON he had contacted the Potter County District Attorney

about bringing criminal charges against the persons he wishes prosecuted. Plaintiff does not allege defendant WESTON tried to prevent this communication with the Potter County District Attorney.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that this Civil Rights Complaint is DISMISSED WITH PREJUDICE AS FRIVOLOUS AND WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED. The Court declines to exercise pendant jurisdiction of any state law claims asserted; and they are DISMISSED WITHOUT PREJUDICE. *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966); *Corwin v. Marney, Orton Investments*, 843 F.2d 194, 200 (5th Cir.1988).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Any pending motions are DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box

13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

ENTERED this 4<sup>th</sup> day of March, 2009.

/s/ Mary Lou Robinson  
MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE