

FILED

AUGUST 25, 2009

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

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

JOE LAWRENCE LUTZ, PRO SE,	§	
also known as	§	
JOE LUTZ,	§	
TDCJ-CID No.1369764,	§	
Previous TDCJ-CID No. 389813,	§	
Previous TDCJ-CID No. 989482,	§	
	§	
Plaintiff,	§	
	§	
V.	§	2:09-CV-0159
	§	
CORINTH DAVIS, GERALD GARRETT,	§	
CHARLES SHIPMAN, JAMES POLAND,	§	
RISSIE OWENS, NEILYN NAVARRO,	§	
PAROLE BOARD MEMBER #1,	§	
PAROLE BOARD MEMBER #2,	§	
and PAROLE BOARD MEMBER #3,	§	
	§	
Defendants.	§	

**MEMORANDUM OPINION ADOPTING AND
SUPPLEMENTING REPORT AND RECOMMENDATION
AND ORDER OF DISMISSAL**

Plaintiff JOE LAWRENCE LUTZ, acting pro se and while a prisoner incarcerated in the Texas Department of Criminal Justice, Correctional Institutions Division, has filed suit on the form promulgated for prisoner use for claims under Title 42, United States Code, Section 1983 complaining against the above-referenced defendants and has been given permission to proceed in accordance with Title 28, United States Code, section 1915(b).

Upon review of plaintiff's claims and the exhibits attached to his complaint, the Court issued a Briefing Order noting that the exhibits attached to his complaint showed denial of parole, not mandatory supervised release, as plaintiff alleged. The Court ordered plaintiff to respond and inform the Court whether he was challenging a denial of release on parole or a denial of release to

mandatory supervision. Further, plaintiff was instructed to inform the Court whether a favorable resolution of his claims in this cause would show he is entitled to immediate or sooner release and, if not, why not.

Plaintiff filed his response on July 29, 2009. Notably absent from such response was any indication whether plaintiff was claiming denial of parole or mandatory supervised release and any briefing of whether a favorable resolution would entitle plaintiff to immediate or sooner release.

After issuance of an August 6, 2009 Report and Recommendation, plaintiff filed a pleading on August 11, 2009 entitled Response to Briefing Order, which was more responsive to the Briefing Order than his July 29th response.

Nothing in any of plaintiff's pleadings undermines the analysis of the defendants' immunity from claims for monetary damages and the Magistrate Judge's recommendation of dismissal on that basis. The Court notes dismissal on this basis was recommended for failure to state a claim on which relief can be granted; however, dismissal because of the defendants' absolute immunity to a claim for monetary relief is more properly classified as frivolous. *See, e.g., Vardas v. Texas Board of Pardons and Paroles*, 47 F.3d 425, (5th Cir. 1995).

The period for objections has expired, and no further pleadings or correspondence have been received from plaintiff in this cause.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation. The Court is of the opinion that the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Judge as to the defendants' absolute immunity from a claim for monetary relief, as supplemented herein.

This Court, therefore, does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge in this case as to defendants' absolute immunity from a claim for monetary relief, as supplemented herein.

IT IS THEREFORE ORDERED that the Civil Rights Complaint by plaintiff JOE LAWRENCE LUTZ is DISMISSED WITH PREJUDICE AS FRIVOLOUS.

LET JUDGMENT BE ENTERED ACCORDINGLY.

All 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.

SIGNED AND ENTERED this 25th day of August, 2009.

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