

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOHNNY RAY ELLIOTT, # 16039302	§	
Plaintiff,	§	
	§	
v.	§	Civil Case No. 3:16-CV-3466-D
	§	
GEORGE POTEET, et al.,	§	
Defendants.	§	

ORDER


After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted, and this action is summarily dismissed with prejudice as frivolous until such time as plaintiff satisfies the conditions set forth in *Heck v. Humphrey*. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). This dismissal counts as a “strike” or “prior occasion” within the meaning of 28 U.S.C. § 1915(g).

The court prospectively certifies that any appeal of this action would not be taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this finding, the court adopts and incorporates by reference the magistrate judge’s findings, conclusions, and recommendation. See *Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997). Based on the findings and recommendation, the court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). If plaintiff appeals, he may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, United States Court of Appeals

for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

SO ORDERED.

March 13, 2017.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE