

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

LESTER J. SMITH, JR.,	:	
	:	
Plaintiff,	:	
	:	
VS.	:	
	:	5 : 22-CV-44 (CAR)
DEPUTY WARDEN PETER EADY, <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER and RECOMMENDATION

Plaintiff has filed multiple motions seeking injunctive relief from the Court. (Docs. 94, 97, 104, 109, 126, 132, 136, 137). Plaintiff has also filed a motion seeking to “re-open” his retaliation claim against Defendants. (Doc. 123).

RECOMMENDATION

In order to obtain injunctive or declaratory relief, the Plaintiff must prove that: (1) there is a substantial likelihood that he will prevail on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest. *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985); *Snook v. Trust Co. of Georgia Bank of Savannah, N.A.*, 909 F.2d 480, 483 (11th Cir. 1990). Injunctive relief will not issue unless the conduct at issue is imminent and no other relief or compensation is available. *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987). “In this Circuit, a preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the ‘burden of persuasion’ as to the four requisites.” *McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998).

In his various motions seeking injunctive relief, Plaintiff alleges that he is being

wrongfully denied adequate showers, medical treatment, and constitutional conditions of confinement. (Docs. 94, 97, 104, 109, 126, 136, 137). He further alleges that Defendants and other corrections officers are retaliating against him and threatening him. (Docs. 104, 126, 132, 136, 137).

A review of the Plaintiff's motions reveals an inadequate basis for the issuance of an injunctive order. Plaintiff has not established that he is entitled to injunctive relief in regard to his requests, i.e., that there is a substantial likelihood of success on the merits or resulting irreparable harm, or that no other relief is available to address his alleged injuries. Accordingly, it is the recommendation of the undersigned that Plaintiff's motions be **DENIED**. (Docs. 94, 97, 104, 109, 126, 132, 136, 137).

Objections

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to the recommendations herein, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the District Judge for clear error. Any objection is limited in length to TWENTY (20) PAGES. *See* M.D. Ga. L.R. 7.4.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal

for plain error if necessary in the interests of justice.”

ORDER

In a motion filed on December 23, 2022, Plaintiff seeks to add retaliation claims against Defendants, apparently based on events that allegedly took place on December 19, 2022. (Doc. 123). In its Initial Order and Recommendation, the Court allowed Plaintiff to proceed with certain deliberate indifference claims, as well as an excessive force claim and a conditions of confinement claim. (Doc. 11, pp. 2, 42-43). In its May 10, 2022 Order, the Court denied a motion construed as a Motion to Supplement, based in part on Plaintiff’s attempt to add claims not appropriately joined, including retaliation claims based on conclusory allegations and unrelated to the claims allowed to go forward. (Doc. 56, p. 31).

In his December 23, 2022 motion, Plaintiff states that “defendants continue to date to subject plaintiff to retaliatory regimens.” (Doc. 123, p. 1). Plaintiff then describes events occurring in December 2022. As with Plaintiff’s earlier attempts to amend his claims, the claims set out in his Motion are unrelated to those claims allowed to go forward. *Id.* As such, Plaintiff’s Motion seeking to add retaliation claims is **DENIED**. *Id.*; *see Daker v. Commissioner of Georgia Department of Corrections*, 2022 WL 2813248, *2 (11th Cir. 2022) (court properly denied leave to amend because proposed amendment sought to add separate and unrelated claims against defendants).

SO ORDERED and RECOMMENDED, this 26th day of April, 2023.

s/ *Thomas Q. Langstaff*

UNITED STATES MAGISTRATE JUDGE