IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14754-G

DARNELL NOLLEY,

Plaintiff-Appellant,

WASEEM DAKER,

Movant,

versus

CYNTHIA NELSON, etc., et al.,

Defendants,

WARDEN, MACON STATE PRISON,
TREVONZA BOBBITT,
Tier II Program Unit Manager, Macon State Prison,
SAMUEL RIDLEY,
Correctional Officer, Macon State Prison,
STEPHEN BOSTICK,
Correctional Counselor, Macon State Prison,
D. GILES,
Correctional Counselor, Macon State Prison, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

Before MARTIN, JILL PRYOR, and NEWSOM, Circuit Judges.

BY THE COURT:

Darnell Nolley, in the district court, filed a motion to proceed on appeal *in forma pauperis*. The district court denied *in forma pauperis* status, certifying that the appeal was not

Appendix A

taken in good faith. Nolley has consented to pay the $505.00 filing fee, using the partial payment plan described under the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915(b). Thus, the only remaining issue is whether the appeal is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). This Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

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

DARNELL NOLLEY,	:	
Plaintiff,	:	
VS.	:	CASE NO. 5:15-CV-75-CAR-MSH
CYNTHIA NELSON, *et al.*,	:	
Defendants.	:	

ORDER AND RECOMMENDATION

Presently pending before the Court is Plaintiff's motion to relate (ECF No. 83), motion for leave to file a sur-reply brief (ECF No. 97), motion for documents at government's expense (ECF No. 98), motion to amend complaint (ECF No. 102), and motion to correct certain filings (ECF No. 115). Also pending before the Court is Defendants' motion for summary judgment (ECF No. 86). Plaintiff's motion to relate, motion for leave to file a sur-reply brief, motion for documents at government's expense, and motion to amend complaint are denied. Plaintiff's motion to correct certain filings is granted. For the reasons stated above, it is recommended that Defendants' motion for summary judgment be granted. For the reasons discussed herein, it is recommended that Defendants' motion for summary judgment be granted.

BACKGROUND

The present action arises out of Plaintiff Darnell Nolley's confinement in the Tier II Administrative Segregation Program ("Tier II") at Macon State Prison ("Macon State"). Plaintiff filed this § 1983 action on March 1, 2015. Compl. 7, ECF No. 1.

APPENDIX B

Though the case was initially dismissed, Plaintiff was granted leave to file a post-judgment motion to amend his complaint. Plaintiff's April 21, 2015 Amended Complaint (ECF No. 12) is the controlling complaint of this case. Order 3, June 1, 2015, ECF No. 11. Pursuant to the ruling on Defendants' pre-answer motion to dismiss (ECF No. 21), Plaintiff's Fourteenth Amendment claim against Defendants in their individual capacities for nominal damages is the only pending claim. Order 4, Mar. 29, 2016, ECF No. 54.

Defendant was deposed (ECF No. 90) on September 12, 2016, and the discovery period ended on September 21, 2016. Order 1, Aug. 22, 2016, ECF No. 80. Defendants filed the presently pending motion for summary judgment (ECF No. 86) on October 21, 2016. Plaintiff filed his response on December 19, 2016 (ECF No. 93) and Defendants filed a reply on January 26, 2017 (ECF No. 95). Defendant's motion is fully briefed and ripe for review.

After the parties' full opportunity to participate in discovery, the undisputed material facts are as follows. Plaintiff was housed in the Tier II program at Macon State from June 9, 2014 to May 26, 2015. Bobbitt Aff. ¶ 22, ECF No. 88-1; Mot. for Summ. J. Attach. A-3.1 at 2, ECF No. 89-1. The purpose of Tier II is administrative segregation to "protect staff, offenders, and the public from offenders who commit [certain] actions, or who otherwise pose a serious threat to the safety and security of the intuitional operation." Bobbitt Aff. ¶ 4; Nolley Depo. at 56:18-57:21, ECF No. 90-1. The Tier II housing units at Macon State are similar to general population housing units, but have fewer furnishings. Pl.'s Decl. ¶ 32, ECF No. 93-1; Nolley Depo. at 54:19-24. Macon State Tier II inmates have access to indigent mail supplies similar to general population

procedural posture, and the late stage of litigation, this Court exercises its discretion and denies Plaintiff's motion to consolidate. The cases shall proceed separately.

B. Motion for Leave to File a Sur-reply Brief

Plaintiff moves for leave to file a sur-reply in opposition of Defendants' motion for summary judgment. That motion (ECF No. 97) is denied. "A district court's decision to permit the filing of a surreply is purely discretionary and should generally only be allowed when a valid reason for such additional briefing exists[.]" *First Specialty Ins. Corp. v. 633 Partners*, 300 F. App'x 777, 788 (11th Cir. 2008). M.D. Ga. Local R. 7.3.1 provides that "[b]riefing of any motion or issue concludes when the movant files a reply brief" and sur-reply briefs are "not favored." Plaintiff asserts that he should be permitted to file a sur-reply brief to "make out more fully his position as to why the factual allegations of his complaint are sufficient to sustain a freestanding Eighth Amendment claim[.]" Mot. for Leave to File Sur-reply Br. 2, ECF No. 97. The Court has clearly—and repeatedly—found that the only pending claim is a Fourteenth Amendment Due Process Claim. Order 4, Mar. 29, 2016, ECF No. 54; Order 7, June 24, 2016, ECF No. 65. The Court finds the issues actually pending to be adequately briefed and additional briefing is not justified.

C. Motion for Documents at Government's Expense

Plaintiff requests copies of ECF Nos. 93, 93-1, and 93-2 (Plaintiff's Response to Defendants' Motion for Summary Judgment and supporting documents), as well as a docket sheet, at "government expense." Mot. 2, ECF No. 98. While Plaintiff has been granted leave to proceed *in forma pauperis* ("IFP") under 28 U.S.C. § 1915, he is not

entitled to have the costs of copying covered by the Court. *See Easley v. Dep't of Corr.*, 590 F. App'x 860, 868 (11th Cir. 2014) (citing *Tabron v. Grace,* 6 F.3d 147, 159 (3d Cir. 1993) ("There is no provision in [§ 1915] for the payment by the government of the costs of . . . litigation expenses, and no other statute authorizes courts to commit federal monies for payment of the necessary expenses in a civil suit brought by an indigent litigant.")). Therefore, although proceeding IFP, Plaintiff is required to fund the expenses of litigation like any other litigant. Plaintiff's motion is thus denied. [3]

D. Motion for Leave to File an Amended Complaint

Also pending before the Court is Plaintiff's sixth motion to amend his complaint (ECF No. 102). Defendants filed a response in opposition to Plaintiff's motion (ECF No. 105). Plaintiff's motion is denied.

Federal Rules of Civil Procedure Rule 15(d) provides that "[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). Since Plaintiff has already amended once as a matter of course (ECF No. 9), he must now seek leave to amend/supplement pursuant to Federal Rules of Civil Procedure Rule 15(a)(2), and such leave should be "freely give[n]" when "justice so requires." Plaintiff reasserts arguments nearly identical to his numerous prior motions for leave to amend (ECF Nos. 20, 35, 48, and 81). This Court has already considered and denied Plaintiff's previous motions to amend (ECF Nos. 50, 54, and 100), which contained the same assertions as the present

[3] The Court notes that the Clerk did provide a courtesy copy of the docket sheet. *See* Mot. to Correct Certain Filings 1, ECF No. 115 ("I am in receipt of the courtesy copy of the docket sheet your office provided[.]").

motion to amend. Plaintiff's motion is therefore denied.

E. Motion to Correct Certain Filings

Plaintiff files a "Motion to Correct Certain Filings" asserting that the documents filed at ECF Nos. 103 and 104 were incorrectly docketed as a supplemental declaration and response to Court Order. Plaintiff asserts that the documents were intended as objections to this Court's March 6, 2017 Order (ECF No. 100) denying Plaintiff's motion to file a second amended complaint. Plaintiff is correct that he has a right to have the United States District Judge review this Court's pretrial Order. However, such Order can only be overturned "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Plaintiff's motion to correct certain filings is granted to afford Plaintiff his statutory right of review. ECF Nos. 103 and 104 shall be construed as an objection to this Court's March 6, 2017 Order, to be ruled on by the United States District Judge pursuant to the "clearly erroneous or contrary to law" standard.

II. Defendants' Motion for Summary Judgment

Defendants move for summary judgment on Plaintiff's Fourteenth Amendment due process claim. Defendants assert that they are entitled to judgment as a matter of law because, *inter alia*, Plaintiff has failed to demonstrate that he was subjected to "atypical and significant hardships" giving rise to due process. Plaintiff responded on December 19, 2016.[4] Defendants' motion is ripe for review and the Court recommends that the motion be granted.

[4] Plaintiff moved for an extension of time (ECF No. 92) to file his Response to Defendants' Motion for Summary Judgment. Plaintiff's motion is granted and his Response is considered timely filed.

A. Summary Judgment Standard

Summary judgment may be granted only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In determining whether a *genuine* dispute of *material* fact exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, drawing all justifiable inferences in the opposing party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A fact is *material* if it is relevant or necessary to the outcome of the suit. *Id.* at 248. A factual dispute is *genuine* if the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Id.*

B. Fourteenth Amendment Claim

It is well-settled that the Due Process Clause of the Fourteenth Amendment protects against deprivations of "life, liberty, or property without the due process of law." U.S. Const. amend. XIV. In order to establish a procedural due process claim under 42 U.S.C. § 1983, a plaintiff must show that a person acting under color of state law deprived him of a constitutionally protected liberty or property interest without constitutionally adequate process. *See, e.g., Foxy Lady, Inc. v. City of Atlanta*, 347 F.3d 1232, 1236 (11th Cir. 2003) (per curiam).

The Due Process Clause "does not directly protect an inmate from changes in the conditions of his confinement" or create a constitutionally-protected interest "'in being confined to a general population cell, rather than the more austere and restrictive administrative segregation quarters.'" *Chandler v. Baird*, 926 F.2d 1057, 1060 (11th Cir.

1991) (quoting *Hewitt v. Helms*, 459 U.S. 460, 466 (1983)). Although "prisoners do not shed all constitutional rights at the prison gate . . . lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Al-Amin v. Donald*, 165 F. App'x 733, 738 (11th Cir. 2006) (citation omitted). Under certain circumstances, segregation is a necessary limitation of privileges and rights that incarceration demands and the transfer of an inmate to less amenable and more restrictive quarters for non-punitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence. *Id.*

Generally, "[w]hen an inmate is placed in conditions more restrictive than those in the general prison population, whether through protective segregation . . . or discretionary administrative segregation, his liberty is affected only if the more restrictive conditions are particularly harsh compared to ordinary prison life or if he remains subject to those conditions for a significantly long time." *Earl v. Racine Cty. Jail*, 718 F.3d 689, 691 (7th Cir. 2013) (per curiam). Thus, to state a due process claim, a prisoner must allege more than just confinement in segregation without due process. *See Sandin v. Conner*, 515 U.S. 472, 484 (1995). The prisoner must also show that the nature of his confinement (i.e., the conditions or duration) gives rise to a protected liberty interest and otherwise entitles him to some measure of due process. *See id.* at 486-87.

Length of segregation alone does not necessarily invoke the protections of due process. *Morefield v. Smith*, 404 F. App'x 443, 446 (11th Cir. 2010) (Four-year confinement in administrative segregation did not tip the balance in favor of establishing a liberty interest.). The Eleventh Circuit recently applied these standards to hold that

With the benefit of full discovery, it is clear that the undisputed material facts support a finding that Plaintiff was not subjected to "atypical and significant hardships" giving rise to a liberty interest. Plaintiff was housed in the Tier II program at Macon State for less than one year. Bobbitt Aff. ¶ 22, ECF No. 88-1; Mot. for Summ. J. Attach. A-3.1 at 2, ECF No. 89-1. The segregation was administrative and designed to "protect staff, offenders, and the public from offenders who commit [certain] actions, or who otherwise pose a serious threat to the safety and security of the intuitional operation." Bobbitt Aff. ¶ 4; Nolley Depo. at 56:18-57:21, ECF No. 90-1. The Tier II housing units at Macon State are described by Plaintiff as "similar to general population housing units, but have fewer furnishing." Pl.'s Decl. ¶ 32, ECF No. 93-1; Nolley Depo. at 54:19-24. Tier II inmates have access (with some restriction) to mail, telephone, and visitation privileges. Bobbitt Aff. ¶ 9; Pl.'s Decl. ¶ 12; Nolley Depo. at 168:9-25, 173:13-16, 174:1-7, 176:2-6. Tier II inmates shower three times per week. Nolley Depo. at 133:11-14; Bobbit Aff. ¶ 9. Some level of out-of-cell recreation time is afforded Tier II inmates. Bobbit Aff. ¶ 9; see generally Nolley Depo. at 141-148.

In sum, the conditions in Tier II at Macon State do not "impose[] an atypical and significant hardship compared to ordinary prison" life. *Turner v. Warden,* 650 F. App'x at 701. Plaintiff has thus failed to show that he was deprived of a liberty interest in violation of the Constitution. It is recommended that Defendants' motion for summary judgment be granted.

CONCLUSION

For the reasons stated above, Plaintiff's motion to relate (ECF No. 83), motion for

leave to file a sur-reply brief (ECF No. 97), motion for documents at government's expense (ECF No. 98), and motion to amend complaint (ECF No. 102) are denied. Plaintiff's motion to correct certain filings (ECF No. 115) is granted. It is recommended that Defendants' motion for summary judgment (ECF No. 86) be granted. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

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."

SO ORDERED AND RECOMMENDED, this 23rd day of August, 2017.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE

NOTE TO PUBLIC ACCESS USERS There is no charge for viewing opinions.

U.S. District Court [LIVE AREA]

Middle District of Georgia

Notice of Electronic Filing

The following transaction was entered on 8/23/2017 at 5:26 PM EDT and filed on 8/23/2017
Case Name: NOLLEY v. NELSON et al
Case Number: 5:15-cv-00075-CAR-MSH
Filer:
Document Number: 132

Docket Text:
ORDER denying [83] Motion to Relate; granting [92] Motion for Extension of Time to File; denying [97] Motion for Leave to File Sur-reply; denying [98] Motion for Documents at Government Expense; denying [102] Motion to Amend/Correct; granting [115] Motion to Correct Certain Filings. REPORT AND RECOMMENDATION re [86] Motion for Summary Judgment. Ordered by US MAGISTRATE JUDGE STEPHEN HYLES on 8/23/2017 (efw)
5:15-cv-00075-CAR-MSH Notice has been electronically mailed to:

DEBORAH NOLAN GORE dgore@law.ga.gov, 04crmail@law.ga.gov, chayward@law.ga.gov, hphillips@law.ga.gov

JOSHUA KYLE BROOKS kbrooks@law.ga.gov, 04crmail@law.ga.gov, jalfordjones@law.ga.gov, rchalmers@law.ga.gov

5:15-cv-00075-CAR-MSH On this date, a copy of this document, including any attachments, has been mailed by United States Postal Service to any non CM/ECF participants as indicated below::

DARNELL NOLLEY
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WASEEM DAKER(Terminated)
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REIDSVILLE, GA 30453

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

DARNELL NOLLEY,	:	
	:	
Plaintiff,	:	
	:	Case No. 5:15-CV-75
v.	:	
	:	Proceedings under 42 U.S.C. § 1983
CYNTHIA NELSON, *et al.*	:	
	:	
Defendants.	:	
	:	

ORDER ON THE RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Darnell Nolley, a state prisoner, filed this *pro se* civil rights action under 42 U.S.C. § 1983 on March 9, 2015, alleging various claims arising out of his confinement in the Tier II Administrative Segregation Program (Tier II) at Macon State Prison. Currently before the Court are the Order and Recommendation [Doc. 132] of the United States Magistrate Judge concerning several of Plaintiff's non-dispositive motions and Defendants' Motion for Summary Judgment, as well as non-party Waseem Daker's Motion for Relief concerning the denial of his Motion to Intervene. To better understand the filings and issues currently at bar, the Court briefly recounts the pertinent portions of the long and somewhat complicated procedural history of this case.

Initially, this case was dismissed; however, Plaintiff was allowed to file an amended complaint wherein the Court determined his individual capacity Fourteenth

Appendix C

Amendment due process claims for nominal damages should go forward. Thereafter, Plaintiff filed an appeal of the dismissal of his other claims, as well as the Court's denial of a motion for preliminary injunction concerning Plaintiff's assignment to Tier II.

Meanwhile, Plaintiff's Fourteenth Amendment due process claims proceeded forward in this Court. The discovery period commenced, during which Plaintiff filed numerous motions, including four motions to amend his complaint, all of which were denied. Discovery expired on July 27, 2016, but due to several complications in taking Plaintiff's deposition, the Court granted Defendants a discovery extension until September 22, 2016, for the sole purpose of permitting them the opportunity to take Plaintiff's deposition.

On August 22, 2016, after general discovery expired, Plaintiff filed a Motion to File a Second Amended Complaint [Doc. 81]. On March 6, 2017, the Magistrate Judge denied that Motion [Doc. 100]. Plaintiff filed another Motion to Amend Complaint on March 29, 2017 [Doc. 102].

On April 3, 2017, the Eleventh Circuit remanded Plaintiff's appeal concerning his motion for preliminary injunction. The Court of Appeals instructed this Court to make a fact determination as to whether the Tier II operates statewide so that it, in turn, could determine whether it had jurisdiction to consider the appeal. This Court has made that fact determination, and that appeal is currently back up at the Eleventh Circuit for further processing.

On April 20, 2017, after the remand was issued, another prisoner, Waseem Daker, filed a motion to intervene in this case [Doc. 109]. The Magistrate Judge denied that motion [Doc. 114], and this Court denied Daker's motion for reconsideration and to vacate [Doc. 128]. Daker has filed a notice of appeal [Doc. 116] of this Court's denial of his motion to intervene, which is currently pending before the Eleventh Circuit Court of Appeals.

The United States Magistrate Judge has now issued an Order and Recommendation [Doc. 132] wherein he denies several of Plaintiff's non-dispositive motions, including a Motion to amend complaint [102], and recommends this Court grant Defendant's Motion for Summary Judgment [Doc. 86]. In addition, the Magistrate Judge construed two of Plaintiff's filings [Doc. 103, 104] as objections to his March 6, 2017 Order [Doc. 100] denying Plaintiff's Second Motion to Amend Complaint [Doc. 81]. Plaintiff has filed objections to the Recommendation [Doc. 137]. Moreover, Movant Waseem Daker has filed another Motion pursuant to Fed. R. Civ. P. 60(b) seeking relief from this Court's Order denying Daker's intervention [Doc. 136].

Having considered the Objections [Docs. 103, 104, 137] and reviewed the Order on Plaintiff's Second Motion to Amend Complaint [Doc. 100] and the Order [Doc. 132] to deny Plaintiff's most recent non-dispositive motions, including another motion to amend complaint for clear error, and reviewed the Recommendation [Doc. 132] to grant Defendants' Motion for Summary Judgment *de novo*, this Court agrees with the findings

does not have the power to alter the status of the case as it rests before the Court of Appeals."[4]

Although orders denying a motion to intervene are not final orders, under the "anomalous rule" the Court of Appeals has "provisional jurisdiction to determine whether the district court erroneously concluded that the appellants were not entitled to intervene as of right under [Federal Rule of Civil Procedure 24(a)], or clearly abused its discretion in denying their application for permissive intervention under [Rule 24(b)]."[5] Rule 4(a)(4) provides a list of post-judgment motions that, if timely filed, "the appeal self-destructs."[6] That list includes motions "for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered."[7] Because Daker filed the Rule 60(b) motion currently at bar clearly outside of this time-frame, and because the Eleventh Circuit has jurisdiction to consider the Order denying his motion to intervene, this Court lacks jurisdiction to consider the merits of his motion.

Even if the Court had jurisdiction to grant the relief Daker requests, it would not grant it. Daker neither establishes that intervention is required nor should be permitted; therefore he fails to present any reason to change this Court's original denial of his motion to intervene.

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[4] *Green Leaf Nursery v. E.I. DuPont De Nemours & Co.*, 341 F.3d 1292, 1309 (11th Cir. 2003) (internal citation omitted).

[5] *Stallworth v. Monsanto Co.*, 558 F.2d 257, 263 (5th Cir. 1977).

[6] *Griggs*, 459 U.S. at 58.

[7] Fed. R. App. P. 4(a)(4)(A)(vi).

Plaintiff's Objections re: Denial of Motion to File Second Amended Complaint

Plaintiff Nolley has filed Objections [Docs. 103, 104] to the Magistrate Judge's Order [Doc. 100] denying Plaintiff's Motion to file a Second Amended Complaint [Doc. 81]. Because Plaintiff has filed objections to the Magistrate Judge's decision on a non-dispositive issue, this Court must consider the objections and modify or set aside any part of the order that is clearly erroneous or is contrary to the law.[8] "Clear error is a highly deferential standard of review."[9] The Magistrate Judge has committed no such error.

It appears Plaintiff wishes to amend his complaint to add an allegation that the Tier II administrative segregation program is operated statewide. As a result of the Eleventh Circuit's remand, this Court has found that the Tier II program is indeed operated statewide. However, allowing Plaintiff to add this allegation would be improper. Plaintiff's Fourteenth Amendment due process claims relate to his confinement in the Tier II Program at Macon State Prison. Permitting Plaintiff to add claims against defendants from different prison facilities would neither expedite the resolution of the claims in this case nor promote trial convenience because a determination of whether such claims have merit arises from different sets of facts. Moreover, discovery in this case is complete, dispositive motions have been filed, and,

[8] *See Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1365 (11th Cir. 2007) (per curiam); *see also* Fed. R. Civ. P. 72(a); 28 U.S.C. §636(b)(1)(A).

[9] *Holton v. City of Thomasville Sch. Dist.*, 425 F.3d 1325, 1350 (11th Cir. 2005) (citation omitted).

as explained below, Plaintiff has failed to establish he was subjected to atypical and significant hardships giving rise to a cognizable claim. Thus, the Court upholds the Magistrate Judge's Order denying Plaintiff's Motion to File a Second Amended Complaint [Doc. 81].

Order and Recommendation on Defendants' Motion for Summary Judgment

In the Order and Recommendation, the Magistrate Judge denies several of Plaintiff's most recent non-dispositive motions, including another motion to amend his complaint, and recommends granting Defendants' Motion for Summary Judgment on Plaintiff's sole remaining Fourteenth Amendment due process claim. In his Objection [Doc. 137], Plaintiff appears to object to the Orders and the Recommendation.

This Court has reviewed the Order denying Plaintiff's non-dispositive motions and finds the rulings contain no clear error nor are contrary to the law. Thus, those rulings are upheld.

The Court has reviewed *de novo* the Recommendation to grant Defendants summary judgment and finds Plaintiff's objections unpersuasive. The Recommendation finds Defendants are entitled to summary judgment because the evidence fails to show Plaintiff was subjected to atypical and significant hardships giving rise to a liberty interest. Plaintiff argues he has made such a showing. This Court, however, is unconvinced and agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, the Order and Recommendation [Doc. 132] is **ADOPTED** and **MADE THE ORDER OF THE COURT**. Plaintiff's Motion to Amend Complaint [Doc. 81] is **DENIED**; Daker's Rule 60(b) Motion [Doc. 136] is **DISMISSED for lack of jurisdiction**; and Defendant's Motion for Summary Judgment [Doc. 86] is **GRANTED**. The Clerk is DIRECTED to enter Judgment in favor of Defendants.

SO ORDERED, this 21st day of September, 2017.

S/ C. Ashley Royal
C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

DARNELL NOLLEY, *

Plaintiff, *

v. * Case No. 5:15-CV-75-CAR

CYNTHIA NELSON, et al., *

Defendants. *

JUDGMENT

Pursuant to this Court's Order dated September 21, 2017, having accepted the recommendation of the United States Magistrate Judge, in its entirety, JUDGMENT is hereby entered dismissing this action.

This 22nd day of September, 2017.

David W. Bunt, Clerk

s/ Amy N. Stapleton, Deputy Clerk

Appendix D

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14754-G

DARNELL NOLLEY,

Plaintiff-Appellant,

WASEEM DAKER,

Movant-Appellant,

versus

CYNTHIA NELSON, etc., et al.,

Defendants,

WARDEN, MACON STATE PRISON,
TREVONZA BOBBITT,
Tier II Program Unit Manager, Macon State Prison,
SAMUEL RIDLEY,
Correctional Officer, Macon State Prison,
STEPHEN BOSTICK,
Correctional Counselor, Macon State Prison,
D. GILES,
Correctional Counselor, Macon State Prison, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

Before: MARTIN, JILL PRYOR and NEWSOM, Circuit Judges.

BY THE COURT:

Darnell Nolley has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated May 9, 2018, denying his motion for leave to proceed in his appeal of

the district court's grant of the defendants' motion to dismiss for failure to state a claim upon which relief could be granted as to some claims, and the district court's grant of the defendants' motion for summary judgment as to some claims, in Nolley's *pro se* 42 U.S.C. § 1983 suit. Because Nolley has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, this motion for reconsideration is DENIED.