IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-16744-A

ANTONIO DAMARCUS WOODSON,

Plaintiff-Appellant,

versus

WILLIAM H. CAREY,
Sergeant,
JEFFREY K. LINDSEY,
Captain,
BRAD WHITEHEAD,
Assistant Warden,
WARDEN,

Defendants-Appellees.

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

Before: TJOFLAT, WILSON and JULIE CARNES, Circuit Judges.

BY THE COURT:

Antonio Damarcus Woodson, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. The district court assessed the $505.00 appellate filing fee, pursuant to the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915. The district court then certified that this appeal is frivolous and not taken in good faith.

Because the district court already has instituted a partial payment plan under 28 U.S.C. § 1915(a) and (b), 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 COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-16744-A

ANTONIO DAMARCUS WOODSON,

Plaintiff-Appellant,

versus

WILLIAM H. CAREY,
Sergeant,
JEFFREY K. LINDSEY,
Captain,
BRAD WHITEHEAD,
Assistant Warden,
WARDEN,

Defendants-Appellees.

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

Before: TJOFLAT, WILSON and JULIE CARNES, Circuit Judges.

BY THE COURT:

Antonio Damarcus Woodson has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's July 11, 2017, order denying him leave to proceed in the appeal of the dismissal of his civil rights complaint, 42 U.S.C. § 1983. Upon review, Woodson's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 11, 2017

Elizabeth Warren
U.S. District Court
300 N HOGAN ST
JACKSONVILLE, FL 32202

Appeal Number: 16-16744-A
Case Style: Antonio Woodson v. William Carey, et al
District Court Docket No: 3:16-cv-00469-TJC-JBT

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Denise E. O'Guin, A
Phone #: (404) 335-6188

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ANTONIO DAMARCUS WOODSON

VS CASE NO. 3:17-cv-00196-MCR-CJK

DARRICK, ET AL

JUDGMENT

Pursuant to and at the direction of the Court, it is

ORDERED AND ADJUDGED that the Plaintiff, ANTONIO DAMARCUS WOODSON, take nothing and that this action be DISMISSED without prejudice.

JESSICA J. LYUBLANOVITS
CLERK OF COURT

April 19, 2017
DATE

/s/ Monica Broussard
Deputy Clerk: Monica Broussard

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ANTONIO DAMARCUS WOODSON,

Plaintiff,

v. **Case No. 3:17cv196/MCR/CJK**

NURSE DARRICK, et al.,

Defendants.
_____/

ORDER

This cause comes on for consideration of the Magistrate Judge's Report and Recommendation dated April 4, 2017. ECF No. 3. Plaintiff has been furnished a copy of the Report and Recommendation and has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). After reviewing the timely objections to the Recommendation, ECF No. 4, the Court has determined that the Report and Recommendation should be adopted.

Accordingly, it is ORDERED:

1. The Magistrate Judge's Report and Recommendation, ECF No. 3, is adopted and incorporated by reference in this Order.

2. Plaintiff's motion to proceed *in forma pauperis* (doc. 2) is DENIED, and this action is DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1915(g).

3. The clerk is directed to close the file.

DONE AND ORDERED this 19th day of April, 2017.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 12, 2017

Antonio Damarcus Woodson
Santa Rosa CI - Inmate Legal Mail
5850 E MILTON RD
MILTON, FL 32583

Appeal Number: 17-11355-A
Case Style: Antonio Woodson v. John Burnsed, et al
District Court Docket No: 3:17-cv-00255-TJC-MCR

RETURNED UNFILED: Motion for permission to appeal in forma pauperis filed by Antonio Damarcus Woodson is returned unfiled because appellant has been designated a three striker, the filing fee must be paid.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Denise E. O'Guin, A
Phone #: (404) 335-6188

MOT-11 Motion or Document Returned

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ANTONIO DAMARCUS WOODSON,

Plaintiff,

v. Case No. 3:17cv196/MCR/CJK

NURSE DARRICK, et al.,

Defendants.
_____/

REPORT AND RECOMMENDATION

Plaintiff Antonio Damarcus Woodson, DC #D90511, is a Florida inmate presently confined at Santa Rosa Correctional Institution. Plaintiff initiated this case on March 23, 2017, by filing a civil rights complaint under 42 U.S.C. § 1983 (doc. 1), and a motion to proceed *in forma pauperis* (doc. 2). Upon review of plaintiff's complaint and prior litigation history, the court concludes that this case should be dismissed under 28 U.S.C. § 1915(g), because plaintiff is barred from proceeding *in forma pauperis* and failed to pay the filing fee upon initiating this suit.

Title 28 U.S.C. § 1915(g) prohibits a prisoner from proceeding *in forma pauperis* under certain circumstances:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or

> detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

A prisoner who is barred from proceeding *in forma pauperis* must pay the filing fee at the time he initiates his lawsuit, and failure to do so warrants dismissal of his case without prejudice. *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (holding that "the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed *in forma pauperis* pursuant to the provisions of § 1915(g)" because the prisoner "must pay the filing fee at the time he initiates the suit."); *Vanderberg v. Donaldson*, 259 F.3d 1321, 1324 (11th Cir. 2001) (stating that after three meritless suits, a prisoner must pay the full filing fee at the time he initiates suit). The only exception is if the prisoner alleges that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g); *Brown v. Johnson*, 387 F.3d 1344 (11th Cir. 2004).

The court takes judicial notice of three prior federal civil actions or appeals filed by plaintiff, while incarcerated, that were dismissed as frivolous or for failure to state a claim upon which relief may be granted. *See Woodson v. Johnson*, Case No. 3:16cv638-BJD-MCR, Doc. 3 (M.D. Fla. May 26, 2016) (dismissing, as frivolous, civil rights complaint filed by plaintiff while incarcerated), *appeal dismissed as frivolous*, No. 16-13370-A (11th Cir. Nov. 15, 2016); *Woodson v.*

Carey, Case No. 3:16cv469-TJC-JBT, Doc. 5 (M.D. Fla. Sept. 29, 2016) (dismissing, for failure to state a claim, civil rights complaint filed by plaintiff while incarcerated), *appeal filed*, No. 16-16744 (11th Cir.); *Woodson v. Whitehead*, Case No. 3:16cv470-HES-JRK, Doc. 4 (M.D. Fla. May 4, 2016) (dismissing, as frivolous, civil rights complaint filed by plaintiff while incarcerated), *affirmed*, No. 16-13278, — F. App'x —, 2016 WL 7367780 (11th Cir. Dec. 20, 2016). Plaintiff's status as a three-striker is recognized by the Middle District. *See Woodson v. Burnsed*, No. 3:17cv255-TJC-MCR, Doc. 5 (M.D. Fla. Mar. 13, 2017) (dismissing, under three strikes provision of 28 U.S.C. § 1915(g), civil rights complaint filed by plaintiff while incarcerated). The foregoing cases may be positively identified as having been filed by plaintiff because they bear his name and Florida Department of Corrections' inmate number "D90511", and because plaintiff acknowledges them in his complaint. (Doc. 1, p. 3).

As plaintiff has three strikes, he may not litigate this case *in forma pauperis* unless he demonstrates that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g); *Brown, supra*. In determining whether a prisoner satisfies the imminent danger exception, the court looks to the prisoner's complaint as a whole, construing it liberally and accepting its allegations as true. *Owens v. Schwartz*, 519 F. App'x 992, 994 (11th Cir. 2013) (*citing Brown*, 387 F.3d at 1350).

General allegations not grounded in specific facts indicating that serious physical injury is imminent are insufficient to invoke the exception to § 1915(g). *Brown*, 387 F.3d at 1350 (*citing Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003)). Plaintiff must make "specific fact allegations of ongoing serious physical injury, or a pattern of misconduct evidencing the likelihood of imminent serious physical injury." *Id.* The imminent danger exception is construed narrowly and available only "for genuine emergencies," where "time is pressing" and "a threat . . . is real and proximate." *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002). A prisoner's claim that he faced a past imminent danger is insufficient to allow him to proceed under the imminent danger exception. *Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999) (holding that the exception was not triggered where the alleged threat of assault by other prisoners ceased to exist when plaintiff was placed in administrative confinement prior to filing his complaint).

Construing the complaint as a whole, plaintiff's allegations do not qualify him for § 1915(g)'s imminent danger exception. Plaintiff alleges that over three months ago, on December 19, 2016, he requested triamcinolone acetonide ointment to treat his eczema, but was denied because he had been caught with two extra tubes of the ointment in his cell (which were confiscated) and still possessed one tube. Plaintiff also complains that his grievances concerning the denial of ointment were not

properly investigated. These allegations do not trigger the imminent danger exception. Because plaintiff did not pay the filing fee at the time he initiated this action, and because it plainly appears he is not entitled to proceed *in forma pauperis*, this case should be dismissed under § 1915(g).

Accordingly, it is respectfully RECOMMENDED:

1. That plaintiff's motion to proceed *in forma pauperis* (doc. 2) be DENIED and this action DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1915(g).

2. That the clerk be directed to close the file.

At Pensacola, Florida this 4th day of April, 2017.

/s/ Charles J. Kahn, Jr.
CHARLES J. KAHN, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations may be filed within 14 days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control. A copy of objections shall be served upon the magistrate judge and all other parties. 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. *See* 11th Cir. R. 3-1; 28 U.S.C. § 636.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO DAMARCUS WOODSON,

Plaintiff,

v. **Case No: 3:17-cv-255-J-32MCR**

JOHN BURNSED, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED, that pursuant to this Court's Order entered on 03/13/2017, Judgment is hereby entered dismissing this case without prejudice.

Date: March 14, 2017

SHERYL L. LOESCH, CLERK

s/T. Carcaba, Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO DAMARCUS WOODSON,

Plaintiff,

v. Case No. 3:17-cv-255-J-32MCR

JOHN BURNSED, et al.,

Defendants.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, an inmate of the Florida penal system, initiated this case by filing a pro se Civil Rights Complaint (Doc. 1) pursuant to 42 U.S.C. § 1983. He also filed a request to proceed in forma pauperis (Docs. 2, 4). In the Complaint, Plaintiff complains about the conditions of his confinement while on "strip" status in 2013 and 2015, and alleges a violation of his due process rights.

The Prison Litigation Reform Act (PLRA) amended 28 U.S.C. § 1915 by adding the following subsection:

> (g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Section 1915(g), commonly referred to as the "three strikes" provision, requires this Court to consider prisoner actions dismissed before, as well as after, the enactment of the PLRA.

The Court takes judicial notice of filings brought by Plaintiff in federal court that were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted: (1) 3:16-cv-149-J-20JBT (M.D. Fla.) (dismissed as frivolous); (2) 16-11388-B (11th Cir.) (appeal dismissed as frivolous); (3) 3:16-cv-469-J-32JBT (M.D. Fla.) (dismissed for failure to state a claim[1]); (4) 3:16-cv-470-J-20JRK (M.D. Fla.) (dismissed as frivolous), affirmed 16-13278 (11th Cir.); (5) 3:16-cv-638-J-39MCR (M.D. Fla.) (dismissed as frivolous); and (6) 16-13370 (11th Cir.) (appeal dismissed as frivolous). Therefore, because Plaintiff has had three or more prior qualifying dismissals and he is not in imminent danger of serious physical injury,[2] this action will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). Accordingly, it is

ORDERED:

1. This case is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(g).

2. The Clerk of Court shall enter judgment dismissing this case without prejudice, terminate any pending motions, and close the file.

DONE AND ORDERED at Jacksonville, Florida, this 13th day of March, 2017.

TIMOTHY J. CORRIGAN
United States District Judge

[1] Plaintiff appealed the dismissal of this case; the appeal is pending. See No. 16-16744 (11th Cir.).

[2] Plaintiff does not claim to be in imminent danger of serious physical injury, and upon review of the file as a whole, the Court finds Plaintiff's allegations insufficient to warrant the imminent danger exception to dismissal.

cr 3/10
c:
Antonio Damarcus Woodson, #D90511

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 05, 2017

Antonio Damarcus Woodson
Santa Rosa CI - Inmate Legal Mail
5850 E MILTON RD
MILTON, FL 32583

Appeal Number: 16-16744-A
Case Style: Antonio Woodson v. William Carey, et al
District Court Docket No: 3:16-cv-00469-TJC-JBT

RETURNED UNFILED: Motion for permission to appeal in forma pauperis, Certificate of interested persons, Letter to the court filed by Antonio Damarcus Woodson is returned unfiled because fee status is pending in district court.

Please allow district court to complete it's ruling concerning fee status before applying for in forma pauperis in this court.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Denise E. O'Guin, A
Phone #: (404) 335-6188

MOT-11 Motion or Document Returned

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-13278
Non-Argument Calendar

D.C. Docket No. 3:16-cv-00470-HES-JRK

ANTONIO DAMARCUS WOODSON,

Plaintiff-Appellant,

versus

BRAD WHITEHEAD,
Assistant Warden,
WARDEN,
MICHAEL A. HONOUR,
JOHN R. MCSPADDEN,

Defendants-Appellees.

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

(December 20, 2016)

Before TJOFLAT, HULL and WILLIAM PRYOR, Circuit Judges.

PER CURIAM:

Antonio Woodson, a state prisoner proceeding *pro se*, appeals the dismissal of his civil rights action under 42 U.S.C. § 1983 against four employees of the Florida State Prison ("FSP")—Captain Michael A. Honour, Lieutenant John R. McSpadden, Warden John Palmer, and Assistant Warden Brad Whitehead—alleging Eighth and Fourteenth Amendment violations as frivolous under 28 U.S.C. § 1915A(b)(1). On appeal, Woodson argues that the district court erred in dismissing his complaint for Eighth and Fourteenth Amendment violations because the factual allegations made in the complaint had arguable merit.

We review a district court's *sua sponte* dismissal of a complaint as frivolous under 28 U.S.C. § 1915A(b)(1) for an abuse of discretion. *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008). A court abuses its discretion by making a clear error of judgment or by applying an incorrect legal standard. *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1307 (11th Cir. 2011).

I.

To determine whether confinement conditions violate the Eighth Amendment, we conduct a two-part analysis. *Chandler v. Crosby*, 379 F.3d 1278, 1289–90 (11th Cir. 2004). First, under the objective component, a prisoner must show the confinement conditions are sufficiently serious to violate the Eighth Amendment. *Id.* at 1289. Second, under the subjective component, a prisoner must show prison officials acted with "deliberate indifference" to the serious

conditions. *Id.* at 1289–90. The plaintiff must satisfy the objective component by showing the challenged conditions are extreme and "'pose[] an unreasonable risk of serious damage to his future health' or safety." *Id.* at 1289. In determining the seriousness of confinement conditions, we assess the severity and duration of the conditions. *Id.* at 1295. The plaintiff must satisfy the subjective deliberate indifference component by showing that prison officials knew of and disregarded an excessive risk of harm to the prisoner. *Id.* at 1289–90 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). Prison officials must "be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and [they] must also draw the inference." *Id.* at 1290.

Woodson's complaint fails to allege facts to satisfy either the objective "substantial risk of serious harm" component or the subjective "deliberate indifference" component for showing an Eighth Amendment violation. Confinement without clothing (other than boxers), bedding, or hygienic materials for 72 hours during the months of April and August in Florida is not the type of extreme prison conditions that create a substantial risk of serious harm. *See id.* at 1289, 1297–98. Additionally, the fact that Warden Palmer saw the conditions in which Woodson was held during his disciplinary confinement is not enough to show that any of the defendants believed Woodson's health or safety to be at risk. Woodson failed to show that any of the defendants had subjective knowledge of a

substantial risk of serious harm to Woodson. *Id.* at 1289–90. Thus, the district court did not err in dismissing Woodson's complaint as frivolous as to his Eighth Amendment claim.

II.

We recognize two situations in which a prisoner is deprived of his liberty such that due process is required. *Kirby v. Siegelman*, 195 F.3d 1285, 1290–91 (11th Cir. 1999). First, a prisoner is entitled to due process when a change in his condition of confinement "is so severe that it essentially exceeds the sentence imposed by the court." *Id.* at 1291. Second, a prisoner has a liberty interest where the state has consistently provided a benefit to a prisoner and deprivation of that benefit imposes an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* (quotation omitted); *see also Sandin v. Conner*, 515 U.S. 472, 484–86 (1995). The Due Process Clause does not create an enforceable liberty interest in freedom from restrictive confinement while a prisoner is incarcerated. *See Hewitt v. Helms*, 459 U.S. 460, 468 (1983), *modified on other grounds by Sandin*, 515 U.S. at 482–84; *Sandin*, 515 U.S. at 484–87. Nor does it create a liberty interest in the "mandatory" language of prison rules and regulations. *Sandin*, 515 U.S. at 482–84.

Woodson's complaint fails to allege sufficient facts to show a Fourteenth Amendment violation. Woodson's placement in the more restrictive disciplinary

confinement at FSP is not the kind of change in condition that exceeds the sentence already imposed or that imposes an atypical or significant hardship on a plaintiff. *See Kirby*, 195 F.3d at 1291; *Sandin*, 515 U.S. at 482–86. FSP's rules and regulations on disciplinary confinement also did not implicate a protected liberty interest under the Due Process Clause. *See Sandin*, 515 U.S. at 482–84. Based on the facts as alleged, Woodson failed to show a constitutional violation, and so, the district court did not err in dismissing Woodson's complaint as frivolous as to his Fourteenth Amendment claim.

Accordingly, upon review of the record and the parties' briefs, we affirm the district court's *sua sponte* dismissal of Woodson's complaint as frivolous under 28 U.S.C. § 1915A(b)(1).

AFFIRMED.

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 COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-11388-B

ANTONIO DAMARCUS WOODSON,

Plaintiff-Appellant,

versus

FLORIDA SP WARDEN,
BRAD WHITEHEAD,
Assistant Warden-FSP,
JEFFREY K. LINDSEY,
Captain-FSP,
DEREK DANIELS,
Sergeant-FSP,

Defendants-Appellees.

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

Before: MARCUS, WILLIAM PRYOR, ROSENBAUM, Circuit Judges.

BY THE COURT:

Antonio Damarcus Woodson, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. The district court denied *in forma pauperis* status, certifying that the appeal was frivolous and not taken in good faith. However, the district court did not assess the $505.00 appellate filing fee, as is required under the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915.

Woodson has consented to pay the $505.00 filing fee, using the partial payment plan described under § 1915(b). Thus, the only remaining issue is whether the appeal is frivolous.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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November 30, 2016

Sheryl L. Loesch
U.S. District Court
300 N HOGAN ST
JACKSONVILLE, FL 32202

Appeal Number: 16-11388-B
Case Style: Antonio Woodson v. Florida SP Warden, et al
District Court Docket No: 3:16-cv-00149-HES-JBT

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Melanie Gaddis, B
Phone #: (404) 335-6187

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO D. WOODSON,

Plaintiff,

V. **Case No: 3:16-cv-469-J-32JBT**

WILLIAM H. CAREY, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that pursuant to this Court's Order entered on September 29, 2016, judgment is hereby entered dismissing this case without prejudice.

Date: September 29, 2016

SHERYL L. LOESCH, CLERK
s/ _____,
Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO D. WOODSON,

Plaintiff,

v. Case No. 3:16-cv-469-J-32JBT

WILLIAM H. CAREY, et al.,

Defendants.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, an inmate of the Florida penal system, initiated this case by filing a pro se Civil Rights Complaint Form (Doc. 1) (Complaint) pursuant to 42 U.S.C. § 1983. Plaintiff also filed a request to proceed in forma pauperis (Doc. 2). In the Complaint, he names as Defendants the following individuals who were employed at Florida State Prison (FSP) at the time of the incident alleged in the Complaint: Sergeant William H. Carey, Captain Jeffrey K. Lindsey, Assistant Warden Brad Whitehead, and Warden John Palmer. Plaintiff alleges that on May 1, 2012, Defendants Lindsey and Carey placed him on a 72-hour property restriction (or strip) "for an alleged rule infraction." He asserts that Defendant Whitehead authorized his placement on property restriction. During this 72-hour period, Plaintiff states he was only given a pair of boxer shorts to wear, and he had no other clothing, bedding, or hygienic products. According to Plaintiff, he was placed on this property restriction prior to his disciplinary hearing for the alleged rule infraction. Plaintiff also alleges that on August 5, 2015, he was again placed on property restriction for an unrelated incident. He claims that Defendant "Palmer was not surprised (was aware) to see the Plaintiff placed (housed) under

these inhumane conditions," and that Warden Palmer "did not take any action to correct the wrong." Plaintiff does not allege that he suffered any physical injury, and he seeks declaratory relief and monetary damages.

The Prison Litigation Reform Act requires the Court to dismiss a case at any time if the Court determines that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2)(B). In reviewing a pro se plaintiff's pleadings, the Court must liberally construe the plaintiff's allegations. Haines v. Kerner, 404 U.S. 519 (1972); Bingham v. Thomas, 654 F.3d 1171, 1175 (11th Cir. 2011).

With respect to whether a complaint "fails to state a claim on which relief may be granted," § 1915(e)(2)(B)(ii) mirrors the language of Rule 12(b)(6), so courts apply the same standard in both contexts. Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997); see also Alba v. Montford, 517 F.3d 1249, 1252 (11th Cir. 2008). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Labels and conclusions" or "a formulaic recitation of the elements of a cause of action" that amount to "naked assertions" will not do. Id. (quotation and citation omitted). Moreover, a complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." Roe v. Aware Woman Ctr. for Choice, Inc., 253 F.3d 678, 683-84 (11th Cir. 2001) (internal quotation and citation omitted).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a right secured under the United States Constitution or federal law, and (2) such deprivation occurred under color of state law. Salvato v. Miley, 790 F.3d 1286, 1295 (11th Cir. 2015); Bingham, 654 F.3d at 1175. Moreover, "conclusory allegations, unwarranted deductions of facts, or legal conclusions masquerading as facts will not prevent dismissal." Rehberger v. Henry Cty., Ga., 577 F. App'x 937, 938 (11th Cir. 2014) (per curiam) (internal quotations and citation omitted). In the absence of a federal constitutional deprivation or violation of a federal right, a plaintiff cannot sustain a cause of action against a defendant.

The Eighth Amendment prohibits the infliction of "cruel and unusual punishment" and it "applies to the conditions of a prisoner's confinement." Chandler v. Crosby, 379 F.3d 1278, 1288 (11th Cir. 2004) (citation omitted). While "'the Constitution does not mandate comfortable prisons,'" conditions violate the Eighth Amendment if they "'involve the wanton and unnecessary infliction of pain.'" Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347, 349 (1981)). To establish such a claim, a prisoner must "allege facts sufficient to show '(1) a substantial risk of serious harm; (2) the defendants' deliberate indifference to that risk; and (3) causation.'" Lane v. Philbin, No. 14-11140, 2016 WL 4487983, at *3 (11th Cir. Aug. 26, 2016) (quoting Hale v. Tallapoosa Cty., 50 F.3d 1579, 1582 (11th Cir. 1995)). "The first element of an Eighth Amendment claim–a substantial risk of serious harm–is assessed under an objective standard." Id. (citation omitted). "The second element . . . 'has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk;

(3) by conduct that is more than mere negligence.'" Id. at *4 (quoting Farrow v. West, 320 F.3d 1235, 1245 (11th Cir. 2003)).

Even liberally construing Plaintiff's allegations, he has failed to allege sufficient factual matter to state a claim under the Eighth Amendment. Regarding the first element, Plaintiff has not alleged sufficient facts to show that he was subjected to a substantial risk of serious harm. While Plaintiff's conditions during the 72-hour period may have been uncomfortable, they were not extreme and did not pose an unreasonable risk of serious injury to his future health or safety. See O'Connor v. Kelley, 644 F. App'x 928, 932 (11th Cir. 2016) (finding that the plaintiff "failed to allege that he was deprived of the 'minimal civilized measure of life's necessities' or that the conditions of his confinement posed an unreasonable risk of serious harm to his future health or safety" (quotations and citation omitted)).

Assuming Plaintiff could meet the first element, he has not sufficiently alleged facts meeting the second element. Plaintiff has not alleged that any of the Defendants were subjectively aware of a serious risk to his health or safety or that Defendants disregarded any serious risk. Plaintiff also does not assert that he complained about his conditions to any of the Defendants or that he suffered any injury stemming from those conditions. Therefore, Plaintiff's Eighth Amendment claim is due to be dismissed.[1] See Edler v. Gielow, No. 3:08cv530/WS/EMT, 2010 WL 3958014, at *7 (N.D. Fla. Oct. 7, 2010) (unpublished) (finding

[1] On the same day he filed the instant Complaint, Plaintiff initiated a separate civil rights case, in which he made identical allegations regarding his placement on property restriction on April 26, 2012. See Complaint (Doc. 1), No. 3:16-cv-470-J-20JRK. The case was dismissed on initial review, see Order (Doc. 4), No. 3:16-cv-470-J-20JRK, and it is currently on appeal in the Eleventh Circuit, see Notice of Appeal (Doc. 6), No. 3:16-cv-470-J-20JRK.

that "the denial of bedding and other comfort items, even in 60 degree temperatures[,] do not reflect that [the plaintiff] was subject to the type of extreme conditions that posed an unreasonable risk of serious damage to health or safety"); see also Turner v. Warden, GDCP, No. 14-10150, 2016 WL 3002284, at *4 (11th Cir. May 25, 2016) (on summary judgment, finding that "[e]ven though [the plaintiff] argues that he was left in a strip cell for ten days without clothing, there is still no evidence that he faced any serious harm. Indeed, his only complaint was that he was cold, but a prisoner's mere discomfort, without more, does not offend the Eighth Amendment" (quotation and citation omitted)).

Plaintiff also raises a due process claim, alleging that he was immediately placed on property restriction for an alleged rule violation prior to actually receiving a disciplinary hearing. He asserts that "property restriction" is not an "authorized" punishment for his actions: disobeying a verbal order.

> A claim brought under the Fourteenth Amendment's Due Process Clause must concern a protected interest, such as the deprivation of liberty. . . . A prisoner's liberty interest under the Due Process Clause is necessarily circumscribed by the nature of the regime to which they have been lawfully committed. Thus, an inmate validly claims the violation of a protected liberty interest when he identifies state actions that unexpectedly alter his term of imprisonment or impose an atypical and significant hardship relative to ordinary prison life.

Smith v. Deemer, 641 F. App'x 865, 866-67 (11th Cir. 2016) (quotations and citations omitted). Defendants' alleged actions did not alter Plaintiff's term of imprisonment or impose an atypical and significant hardship on him. See Sandin v. Conner, 515 U.S. 472, 485 (1995) ("Discipline by prison officials in response to a wide range of misconduct falls within

the expected perimeters of the sentence imposed by a court of law."). Thus, Plaintiff's due process claim is due to be dismissed.[2]

In sum, liberally construing Plaintiff's allegations, the Court finds that he has failed to state a claim upon which relief may be granted, and this case is due to be dismissed. Accordingly, it is

ORDERED:

1. This case is **DISMISSED without prejudice**.

2. The **Clerk of Court** shall enter judgment dismissing this case without prejudice, terminate any pending motions, and close the file.

DONE AND ORDERED at Jacksonville, Florida, this 29th day of September, 2016.

TIMOTHY J. CORRIGAN
United States District Judge

cr 9/28
c:
Antonio D. Woodson, #D90511

[2] Notably, Plaintiff does not raise any claim alleging that he did not receive an adequate disciplinary hearing for the charge of disobeying a verbal order.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 29, 2016

Antonio Damarcus Woodson
Florida SP - Inmate Legal Mail
PO BOX 800
RAIFORD, FL 32083

Appeal Number: 16-13370-A
Case Style: Antonio Woodson v. Michael Johnson, et al
District Court Docket No: 3:16-cv-00638-BJD-MCR

The district court has denied your motion to proceed on appeal in forma pauperis, certifying that your appeal is frivolous and not taken in good faith. The district court has also directed that you pay fees required to maintain this appeal pursuant to 28 U.S.C. § 1915 (as amended by the Prison Litigation Reform Act).

Pursuant to Fed.R.App.P. 24(a) and 11th Cir. R 24-2, you must file a motion for leave to proceed with this appeal within thirty (30) days from the date of this letter. If such a motion is not received within thirty (30) days, this appeal will be dismissed by the clerk without further notice pursuant to 11th Cir. R. 42-2.

FRAP 26.1 and the accompanying circuit rules on the Certificate of Interested Persons and Corporate Disclosure Statement (CIP) provide that: (1) every party and amicus curiae must include a CIP within every motion, petition, brief, answer, response, and reply filed; (2) in addition, appellants and petitioners must file a CIP within 14 days after the date the case or appeal is docketed in this court; and (3) within 14 days after the filing of the appellants' and petitioners' CIP, all appellees, intervenors, respondents, and all other parties to the case or appeal must file a notice either indicating that the CIP is correct and complete, or adding any interested persons or entities omitted from the CIP.

On the same day a party or amicus curiae first files its paper or e-filed CIP, that filer must also complete the court's web-based CIP at the Web-Based CIP link on the court's website. Pro se filers (except attorneys appearing in particular cases as pro se parties) are **not required or authorized** to complete the web-based CIP.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Denise E. O'Guin, A
Phone #: (404) 335-6188

PLRA-7 Ltr DC dn Lv FF assessed

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO DAMARCUS WOODSON,

Plaintiff,

V. **Case No: 3:16-cv-638-J-39MCR**

MICHAEL JOHNSON, Sergeant, RIZER, Captain, BRAD WHITEHEAD, Assistant Warden, and JOHN PALMER, Warden,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that pursuant to this Court's Order, entered May 26, 2016, judgment is hereby entered DISMISSING this case without prejudice.

Date: May 27, 2016

SHERYL L. LOESCH, CLERK

s/, Deputy Clerk

Copy to:

Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO DEMARCUS WOODSON,

Plaintiff,

v. Case No. 3:16-cv-638-J-39MCR

MICHAEL JOHNSON, et al.,

Defendants.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, an inmate incarcerated at Florida State Prison (FSP) who is proceeding pro se and in forma pauperis, initiated this cause of action by filing a Civil Rights Complaint (Complaint) (Doc. 1) pursuant to 42 U.S.C. § 1983 on May 20, 2016, pursuant to the mailbox rule. He names Warden John Palmer, Assistant Warden Brad Whitehead, Captain Rizer, and Sergeant Michael Johnson as the Defendants.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a right secured under the United States Constitution or federal law and (2) such deprivation occurred under color of state law. The Court must read Plaintiff's pro se allegations in a liberal fashion. Haines v. Kerner, 404 U.S. 519 (1972). "A claim is frivolous if it is without arguable merit either in law or fact." Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir.) (citing Battle v. Central State Hospital, 898 F.2d 126, 129 (11th Cir. 1990)), cert. denied, 534

U.S. 1044 (2001). Frivolity dismissals should be ordered only when the legal theories are "indisputably meritless," Neitzke v. Williams, 490 U.S. 319, 327 (1989), or when the claims rely on factual allegations that are "clearly baseless," Denton v. Hernandez, 504 U.S. 25, 32 (1992). Additionally, a claim may be dismissed as frivolous when it appears that a plaintiff has little or no chance of success. Bilal v. Driver, 251 F.3d at 1349.

In the Complaint, Plaintiff claims that he was subjected to cruel and unusual punishment when, on May 23, 2012, after an alleged institutional rule infraction (disobeying a verbal order), he was placed in a cell by Defendants Rizer and Johnson on property restriction or "strip." He complains that he was placed in a cell with just a pair of boxer shorts. He was not provided clothing, bedding, and hygiene materials. He remained on strip status for seventy-two hours. He alleges this was punishment for disobeying a verbal order, prior to his receiving a disciplinary report for that rule infraction. He also complains that he was deprived of due process of law because he was placed on property restriction prior to receiving a disciplinary report and a hearing.

Plaintiff complains that Assistant Warden Whitehead's authorization of Plaintiff's placement on strip status deprived him of due process of law. He alleges that he was placed on strip status again on Wednesday August 5, 2015, and Warden Palmer passed the cell where Plaintiff was confined for seventy-two hours on

strip status and failed to take any action. As relief, Plaintiff seeks declaratory relief, injunctive relief, punitive damages, and nominal damages (although he references a large sum of money as nominal damages).

In Chandler v. Crosby, 379 F.3d 1278, 1288-89 (11th Cir. 2004) (footnote omitted), the Eleventh Circuit addressed a prison conditions complaint and said:

> The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The "cruel and unusual punishments" standard applies to the conditions of a prisoner's confinement. Rhodes v. Chapman, 452 U.S. 337, 345-46, 101 S.Ct. 2392, 2398-99, 69 L.Ed.2d 59 (1981). While "the primary concern of the drafters was to proscribe tortures and other barbarous methods of punishment," the Supreme Court's "more recent cases [show that] [t]he [Eighth] Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976) (marks, citations, and brackets omitted). "No static test can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Rhodes, 452 U.S. at 346, 101 S.Ct. at 2399 (marks and citation omitted).
>
> Even so, "the Constitution does not mandate comfortable prisons." Id. at 349, 101 S.Ct. at 2400. If prison conditions are merely "restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." Id. at 347, 101 S.Ct. at 2399. Generally

> speaking, prison conditions rise to the level of an Eighth Amendment violation only when they "involve the wanton and unnecessary infliction of pain." Id.

Plaintiff is an inmate confined in FSP, a high security institution. In order to establish an Eighth Amendment conditions of confinement claim, he must demonstrate that a prison official was deliberately indifferent to a substantial risk of serious harm to him. Bennett v. Chitwood, 519 F. App'x 569, 573 (11th Cir. 2013) (per curiam) (citing Farmer v. Brennan, 511 U.S. 825, 832-33 (1994)). To do so, he must meet both the objective and subjective components to the deliberate-indifference test. Id. (citing Farmer, 511 U.S. at 834).

> To satisfy the objective, "substantial risk of serious harm" component, a plaintiff "must show a deprivation that is, 'objectively, sufficiently serious,' which means that the defendants' actions resulted in the denial of the minimal civilized measure of life's necessities." Cottrell v. Caldwell, 85 F.3d 1480, 1491 (11th Cir. 1996). "The challenged condition must be 'extreme'": the prisoner must show that "society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk." Chandler v. Crosby, 379 F.3d 1278, 1289 (11th Cir. 2004). In evaluating an Eighth Amendment claim, we consider both the "severity" and the "duration" of the prisoner's exposure to extreme temperatures. Id. at 1295. Merely showing that prison conditions are uncomfortable is not enough. Id. at 1289.

> For the subjective component, the prison official must (1) have subjective knowledge of the risk of serious harm, and (2) nevertheless fail to respond reasonably to the risk. Farmer, 511 U.S. at 837, 114 S.Ct. at 1979. Subjective knowledge on the part of the prison official requires that the official was aware of the facts "from which the inference could be drawn that a substantial risk of serious harm exist[ed]," and that the official actually drew that inference. Burnette v. Taylor, 533 F.3d 1325, 1330 (11th Cir. 2008). A prison official must have a sufficiently culpable state of mind to be deliberately indifferent. Carter v. Galloway, 352 F.3d 1346, 1349 (11th Cir. 2003). "[T]he evidence must demonstrate that with knowledge of the infirm conditions, the official knowingly or recklessly declined to take actions that would have improved the conditions." Thomas v. Bryant, 614 F.3d 1288, 1312 (11th Cir. 2010) (alteration and quotation omitted). Mistakes and even negligence on the part of prison officials are not enough for a constitutional violation. Crosby, 379 F.3d at 1289.

Id. at 574.

Although Plaintiff has presented facts showing the conditions of his confinement were uncomfortable, they are not extreme.[1] Some prison conditions have been found to be extreme, qualifying as cruel and unusual under the Eighth Amendment:

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[1] For example, in Bennett, 519 F. App'x at 573, the Eleventh Circuit concluded that, even though the plaintiff alleged he was uncomfortably cold when he was required to remain nude for approximately ten and one half hours in fifty degree temperatures, prison officials did not subject the plaintiff to cruel and unusual punishment where they did not require the inmate to go without clothing or bed linens overnight, and the inmate did not report medical problems as result of his exposure to cold. Id.

> In Chandler v. Crosby, 379 F.3d 1278 (11th Cir. 2004), the Eleventh Circuit examined a number of cases across the nation for guidance on when allegations of extreme cold qualified as "cruel and unusual punishment." Cases where conditions were found to be serious deprivations were: Mitchell v. Maynard, 80 F.3d 1433, 1443 (10th Cir. 1996) (lack of heat combined with the lack of clothing and bedding over extended period of time with other conditions such as no exercise, no hot water, no toilet paper); Del Raine v. Williford, 32 F.3d 1024, 1035-36 (7th Cir. 1994) (broken windows offered no relief from the outdoor wind chills of forty to fifty degrees below zero); Henderson v. DeRobertis, 940 F.2d 1055, 1060 (7th Cir. 1991) (inmates exposed to temperatures below freezing for four days); Corselli v. Coughlin, 842 F.2d 23, 27 (2d Cir. 1988) (inmate exposed for 3 months to temperatures so cold there was ice in the toilet bowl); Lewis v. Lane, 816 F.2d 1165, 1171 (7th Cir. 1987) (inmate exposed repeatedly to cell temperatures between 52 and 54 degrees).

Wineston v. Pack, No. 4:06cv438-RH/AK, 2009 WL 3126252, at *12 (N.D. Fla. Sept. 24, 2009) (Not Reported in F.Supp.2d).

However, conditions found not to constitute constitutional violations are: Palmer v. Johnson, 193 F.3d 346, 349 (5th Cir. 1999) (inmates left outdoors overnight in temperatures of 59 degree temperatures); and Hernandez v. Fla. Dep't of Corr., 281 F. App'x 862 (11th Cir. 2008) (exposure to winter temperatures such as they are in Northern Florida for two months not considered harmful to inmate's health). Also, in the Wineston case, the court concluded that the plaintiff's placement in a cell without sheets or blankets for less than twenty-four hours when the temperature dropped to

fifty-eights degrees did not constitute cruel and usual punishment. Id.

Here, with respect to the objective component of Plaintiff's Eighth Amendment claim, Plaintiff does not allege that it was extremely cold in the cell. Indeed, he does not describe the temperature in his cell during the May 23, 2012 incident or the August 5, 2015 incident. Obviously, these incidents allegedly occurred in Florida in the late spring and summer, not during the cold winter months. Plaintiff does not contend that he suffered any injury from his exposure to extreme temperatures while he was on property restriction status. Thus, this Court concludes that his seventy-two hour exposure to the temperatures in a prison cell in late May and August is not the sort of extreme condition that violates contemporary standards of decency.

With respect to the subjective component, Plaintiff admits that he was placed on property restriction after a disciplinary infraction incident for which he was apparently charged with disobeying a verbal order. Of note, placement in strip status is a tool utilized for the security and safety of inmates and staff members. Plaintiff does not allege that he ever informed the named Defendants he was uncomfortably cold during the relevant seventy-two hour period. Moreover, Plaintiff does not claim that the named Defendants had subjective knowledge of any risk of serious harm to

Plaintiff. Instead, he simply states that no physical injury is required.

Based on a thorough review of the Complaint, Plaintiff has failed to allege any facts that would support a finding that the named Defendants subjected Plaintiff to cruel and unusual punishment. Indeed, the denial of bedding and comfort items and the circumstances of which Plaintiff complains "do not reflect that he was subject to the type of extreme conditions that posed an unreasonable risk of serious damage to health or safety." Edler v. Gielow, No. 3:08cv530/WS/EMT, 2010 WL 3958014, at *7 (N.D. Fla. Oct. 7, 2010) (Not Reported in F.Supp.2d.). Therefore, this case is due to be dismissed as frivolous because Plaintiff has little or no chance of success on his Eighth Amendment claim.

Also, the Court concludes that Plaintiff has little or no chance of success on his due process claim.[2] To the extent Plaintiff is raising a due process claim because he was immediately confined in a type of management confinement (property restriction or strip) after the rule infraction (disobeying a verbal order), the alleged actions of the Defendants did not impose an atypical and significant hardship on Plaintiff in relation to the ordinary

[2] To the extent Plaintiff is contending that the Defendants deprived him of his personal property by placing him on a brief period of property restriction, this brief deprivation of property after a disciplinary incident and prior to the disciplinary hearing does not rise to the level of a federal constitutional violation.

incidents of prison life. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (holding that the prisoner's thirty-day disciplinary segregation "did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest"); Wilson v. Blankenship, 163 F.3d 1284, 1295 n.17 (11th Cir. 1998) (finding the due process clause does not create a liberty interest in being confined in general population rather than administrative segregation); Hewitt v. Helms, 459 U.S. 460, 466 (1983) (receded from by Sandin) (an inmate has no liberty interest in being confined in general population rather than in the more restrictive atmosphere of administrative or disciplinary confinement). Relying on the reasoning of Sandin and its progeny, the Court holds that this action is due to be dismissed as frivolous.[3]

In the Complaint, Plaintiff admits that he did not suffer any physical injury. To the extent he is seeking damages for mental or emotional injury, his claim for punitive damages and his apparent claim for compensatory damages are barred by 42 U.S.C. § 1997e(e) as long as he remains incarcerated.[4] See Napier v. Preslicka, 314

[3] The Court notes that Plaintiff does not assert that he was deprived of a disciplinary proceeding with regard to a disciplinary charge. Therefore, he has not presented operative facts supporting a due process claim in this regard.

[4] Although Plaintiff states that he is seeking nominal damages, he references a large sum of money which would really either constitute punitive or compensatory damages. Of note, nominal damages are usually entered in the amount of $1.00.

F.3d 528, 531-32 (11th Cir. 2002), cert. denied, 540 U.S. 1112 (2004).

In conclusion, Plaintiff has little or no chance of success. Thus, for all of the above-stated reasons, this case will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly, it is now

ORDERED AND ADJUDGED:

1. This case is **DISMISSED WITHOUT PREJUDICE.**

2. The Clerk of the Court shall enter judgment dismissing this case without prejudice, and close this case.

DONE AND ORDERED at Jacksonville, Florida, this 26th day of May, 2016.

UNITED STATES DISTRICT JUDGE

sa 5/25
c:
Antonio Damarcus Woodson

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO D. WOODSON,

Plaintiff,

-vs- **Case No. 3:16-cv-470-J-20JRK**

BRAD WHITEHEAD, etc.; et al.,

Defendants.

_____/

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that pursuant to this Court's Order, entered May 4, 2016 this case is hereby dismissed without prejudice.

Date: May 6, 2016

SHERYL L. LOESCH, CLERK

/S/ R.Hall
By : Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTONIO D. WOODSON,

Plaintiff,

v. Case No. 3:16-cv-470-J-20JRK

BRAD WHITEHEAD, etc.; et al.,

Defendants.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, an inmate incarcerated at Florida State Prison (FSP) who is proceeding pro se and in forma pauperis, initiated this cause of action by filing a Civil Rights Complaint (Complaint) (Doc. 1) pursuant to 42 U.S.C. § 1983 on April 18, 2016. He names Warden John Palmer, Assistant Warden Brad Whitehead, Captain Michael A. Honour, and Lieutenant John R. McSpadden as the Defendants.

In the Complaint, Plaintiff claims that he was subjected to cruel and unusual punishment when, on April 26, 2012, after an alleged rule infraction (disobeying a verbal order), he was placed in a cell by Defendants Honour and McSpadden on property restriction or "strip." He complains that he was placed in a cell with just a pair of boxer shorts. He was not provided clothing, bedding, and hygiene materials. He remained on strip status for seventy-two hours. He alleges this was punishment for disobeying a verbal order, prior to his receiving a disciplinary report for

that rule infraction. He also complains that he was deprived of due process of law because he was placed on property restriction prior to receiving a disciplinary report and a hearing.

Plaintiff complains that Assistant Warden Whitehead's authorization of his placement on strip status deprived him of due process of law. Plaintiff was placed on strip status again on Wednesday August 5, 2015, and Warden Palmer passed the cell where Plaintiff was confined for seventy-two hours on strip status and failed to take any action. As relief, Plaintiff seeks injunctive relief, punitive damages, and nominal damages.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a right secured under the United States Constitution or federal law and (2) such deprivation occurred under color of state law. The Court must read Plaintiff's pro se allegations in a liberal fashion. Haines v. Kerner, 404 U.S. 519 (1972). "A claim is frivolous if it is without arguable merit either in law or fact." Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir.) (citing Battle v. Central State Hospital, 898 F.2d 126, 129 (11th Cir. 1990)), cert. denied, 534 U.S. 1044 (2001). Frivolity dismissals should be ordered only when the legal theories are "indisputably meritless," Neitzke v. Williams, 490 U.S. 319, 327 (1989), or when the claims rely on factual allegations that are "clearly baseless," Denton v. Hernandez, 504 U.S. 25, 32 (1992). Additionally, a claim may be

dismissed as frivolous when it appears that a plaintiff has little or no chance of success. Bilal v. Driver, 251 F.3d at 1349.

The Eleventh Circuit, in Chandler v. Crosby, 379 F.3d 1278, 1288-89 (11th Cir. 2004) (footnote omitted), explained:

> The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The "cruel and unusual punishments" standard applies to the conditions of a prisoner's confinement. Rhodes v. Chapman, 452 U.S. 337, 345-46, 101 S.Ct. 2392, 2398-99, 69 L.Ed.2d 59 (1981). While "the primary concern of the drafters was to proscribe tortures and other barbarous methods of punishment," the Supreme Court's "more recent cases [show that] [t]he [Eighth] Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976) (marks, citations, and brackets omitted). "No static test can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Rhodes, 452 U.S. at 346, 101 S.Ct. at 2399 (marks and citation omitted).
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> Even so, "the Constitution does not mandate comfortable prisons." Id. at 349, 101 S.Ct. at 2400. If prison conditions are merely "restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." Id. at 347, 101 S.Ct. at 2399. Generally speaking, prison conditions rise to the level of an Eighth Amendment violation only when they "involve the wanton and unnecessary infliction of pain." Id.

Plaintiff is an incarcerated prisoner, confined in FSP. As such, in order to establish an Eighth Amendment conditions of confinement claim, he must demonstrate that a prison official was deliberately indifferent to a substantial risk of serious harm to him. Bennett v. Chitwood, 519 F. App'x 569, 573 (11th Cir. 2013) (per curiam) (citing Farmer v. Brennan, 511 U.S. 825, 832-33 (1994)). There is both an objective and a subjective component to the deliberate-indifference test. Id. (citing Farmer, 511 U.S. at 834).

> To satisfy the objective, "substantial risk of serious harm" component, a plaintiff "must show a deprivation that is, 'objectively, sufficiently serious,' which means that the defendants' actions resulted in the denial of the minimal civilized measure of life's necessities." Cottrell v. Caldwell, 85 F.3d 1480, 1491 (11th Cir. 1996). "The challenged condition must be 'extreme'": the prisoner must show that "society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk." Chandler v. Crosby, 379 F.3d 1278, 1289 (11th Cir. 2004). In evaluating an Eighth Amendment claim, we consider both the "severity" and the "duration" of the prisoner's exposure to extreme temperatures. Id. at 1295. Merely showing that prison conditions are uncomfortable is not enough. Id. at 1289.
>
> For the subjective component, the prison official must (1) have subjective knowledge of the risk of serious harm, and (2) nevertheless fail to respond reasonably to the risk. Farmer, 511 U.S. at 837, 114 S.Ct. at 1979.

> Subjective knowledge on the part of the prison official requires that the official was aware of the facts "from which the inference could be drawn that a substantial risk of serious harm exist[ed]," and that the official actually drew that inference. Burnette v. Taylor, 533 F.3d 1325, 1330 (11th Cir. 2008). A prison official must have a sufficiently culpable state of mind to be deliberately indifferent. Carter v. Galloway, 352 F.3d 1346, 1349 (11th Cir. 2003). "[T]he evidence must demonstrate that with knowledge of the infirm conditions, the official knowingly or recklessly declined to take actions that would have improved the conditions." Thomas v. Bryant, 614 F.3d 1288, 1312 (11th Cir. 2010) (alteration and quotation omitted). Mistakes and even negligence on the part of prison officials are not enough for a constitutional violation. Crosby, 379 F.3d at 1289.

Id. at 574.

Plaintiff has presented facts showing the conditions of his confinement were uncomfortable, not extreme. For example, in Bennett, the Eleventh Circuit concluded that, even though the plaintiff alleged he was uncomfortably cold when he was required to remain nude for approximately ten and one half hours in fifty degree temperatures, prison officials did not subject the plaintiff to cruel and unusual punishment where they did not require the inmate to go without clothing or bed linens overnight, and the inmate did not report medical problems as result of his exposure to cold. Id.

There have been situations where prison conditions were found to be extreme, qualifying as cruel and unusual under the Eighth Amendment:

> In Chandler v. Crosby, 379 F.3d 1278 (11th Cir. 2004), the Eleventh Circuit examined a number of cases across the nation for guidance on when allegations of extreme cold qualified as "cruel and unusual punishment." Cases where conditions were found to be serious deprivations were: Mitchell v. Maynard, 80 F.3d 1433, 1443 (10th Cir. 1996) (lack of heat combined with the lack of clothing and bedding over extended period of time with other conditions such as no exercise, no hot water, no toilet paper); Del Raine v. Williford, 32 F.3d 1024, 1035-36 (7th Cir. 1994) (broken windows offered no relief from the outdoor wind chills of forty to fifty degrees below zero); Henderson v. DeRobertis, 940 F.2d 1055, 1060 (7th Cir. 1991) (inmates exposed to temperatures below freezing for four days); Corselli v. Coughlin, 842 F.2d 23, 27 (2d Cir. 1988) (inmate exposed for 3 months to temperatures so cold there was ice in the toilet bowl); Lewis v. Lane, 816 F.2d 1165, 1171 (7th Cir. 1987) (inmate exposed repeatedly to cell temperatures between 52 and 54 degrees).

Wineston v. Pack, No. 4:06cv438-RH/AK, 2009 WL 3126252, at *12 (N.D. Fla. Sept. 24, 2009) (Not Reported in F.Supp.2d).[1] In the Wineston case, the court concluded that the plaintiff's placement in a cell without sheets or blankets for less than twenty-four

[1] Conditions found not to constitute constitutional violations are: Palmer v. Johnson, 193 F.3d 346, 349 (5th Cir. 1999) (inmates left outdoors overnight in temperatures of 59 degree temperatures); and Hernandez v. Fla. Dep't of Corr., 281 F. App'x 862 (11th Cir. 2008) (exposure to winter temperatures such as they are in Northern Florida for two months not considered harmful to inmate's health).

hours when the temperature dropped to fifty-eights degrees did not constitute cruel and usual punishment. Id.

Here, with respect to the objective component of Plaintiff's Eighth Amendment claim, Plaintiff does not allege that it was extremely cold in the cell. Indeed, he does not describe the temperature in his cell during the April 26, 2012 incident or the August 5, 2015 incident. Obviously, these incidents allegedly occurred in the spring and summer, not during the cold winter months. Plaintiff does not contend that he suffered any injury from his exposure to extreme temperatures while he was on property restriction status. Thus, this Court concludes that his seventy-two hour exposure to the temperatures in a prison cell in April and August is not the sort of extreme condition that violates contemporary standards of decency.

With respect to the subjective component, Plaintiff admits that he was placed on property restriction after a disciplinary infraction incident for which he was eventually charged with disobeying a verbal order. Of note, placement in strip status is a tool utilized for the security and safety of inmates and staff members. Plaintiff does not allege that he ever informed the named Defendants he was uncomfortably cold during the relevant seventy-two hour period. Moreover, Plaintiff does not claim that the named Defendants had subjective knowledge of any risk of serious harm to Plaintiff. Instead, he simply states that no physical injury is

required. On the contrary, the denial of bedding and comfort items and the circumstances of which Plaintiff complains "do not reflect that he was subject to the type of extreme conditions that posed an unreasonable risk of serious damage to health or safety." Edler v. Gielow, No. 3:08cv530/WS/EMT, 2010 WL 3958014, at *7 (N.D. Fla. Oct. 7, 2010) (Not Reported in F.Supp.2d.).

Based on a thorough review of the Complaint, Plaintiff has failed to allege any facts that would support a finding that the named Defendants subjected Plaintiff to cruel and unusual punishment. Thus, this case is due to be dismissed as frivolous because Plaintiff has little or no chance of success on his Eighth Amendment claim.

In addition, Plaintiff has little or no chance of success on his due process claim.[2] To the extent Plaintiff is raising a due process claim because he was immediately confined in a type of management confinement (property restriction or strip) after the rule infraction (disobeying a verbal order), the alleged actions of the Defendants did not impose an atypical and significant hardship on Plaintiff in relation to the ordinary incidents of prison life. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (holding that the

[2] To the extent Plaintiff is contending that the Defendants deprived him of his personal property by placing him on a brief period of property restriction, this brief deprivation of property after a disciplinary incident and prior to the disciplinary hearing does not rise to the level of a federal constitutional violation.

prisoner's thirty-day disciplinary segregation "did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest"); Wilson v. Blankenship, 163 F.3d 1284, 1295 n.17 (11th Cir. 1998) (finding the due process clause does not create a liberty interest in being confined in general population rather than administrative segregation); Hewitt v. Helms, 459 U.S. 460, 466 (1983) (receded from by Sandin) (an inmate has no liberty interest in being confined in general population rather than in the more restrictive atmosphere of administrative or disciplinary confinement). Therefore, relying on the reasoning of Sandin and its progeny, this action is due to be dismissed as frivolous.

Plaintiff admits that he was charged with a disciplinary violation of disobeying a verbal order. He does not contend that he was deprived of a disciplinary proceeding with regard to this disciplinary charge. Therefore, he has not presented operative facts supporting a due process claim in this regard.

In the Complaint, Plaintiff admits that he did not suffer any physical injury when these events occurred at FSP. As a result, he is seeking damages for mental or emotional injury. Therefore, his claim is barred by 42 U.S.C. § 1997e(e) as long as he remains incarcerated. See Napier v. Preslicka, 314 F.3d 528, 531-32 (11th Cir. 2002), cert. denied, 540 U.S. 1112 (2004).

Based on all of the above, Plaintiff has little or no chance of success. Thus, for all of the above-stated reasons, this case will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly, it is now

ORDERED AND ADJUDGED:

1. This case is **DISMISSED WITHOUT PREJUDICE.**

2. The Clerk of the Court shall enter judgment dismissing this case without prejudice, and close this case.

DONE AND ORDERED at Jacksonville, Florida, this 27 day of April, 2016.

UNITED STATES DISTRICT JUDGE

sa 4/27
c:
Antonio D. Woodson