

ATTENTION,LAW_CLERK_2,PRISON

**U.S. District Court
Western District of Louisiana (Lake Charles)
CIVIL DOCKET FOR CASE #: 2:23-cv-00661-JDC-TPL**

Foster v. Thompson et al
Assigned to: Judge James D Cain, Jr
Referred to: Magistrate Judge Thomas P LeBlanc
Case in other court: 5CCA, 23-30682
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 05/17/2023
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner Petitions:
Civil Rights
Jurisdiction: Federal Question

Plaintiff

Jeremy Dewayne Foster

represented by **Jeremy Dewayne Foster**
609509
David Wade Correctional Center
670 Bell Hill Rd
Homer, LA 71040
PRO SE

V.

Defendant

Brent Thompson
TERMINATED: 08/23/2023

Defendant

Jessie Bellamy

represented by **Victoria Reed Murry**
LA Dept of Justice (ALEX)
900 Murray St Ste B-100B
Alexandria, LA 71301
318-487-5944
Fax: 318-487-5826
Email: murryv@ag.state.la.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Krystle Simon
TERMINATED: 08/23/2023

Defendant

Curley Victorian
TERMINATED: 08/23/2023

EveryWhere I have Checked
or ARROWS please look. This
Facility has All my paperwork
in Dis Array. This is what
I've Found. with R/R from
Mag. Judge. Suit is wrong
Court anyway. Thanks

6/24/2024, 11:03 AM

Defendant**Mark Estes**

TERMINATED: 08/23/2023

Defendant**Col Young**

TERMINATED: 08/23/2023

Defendant**Col Johnson**

TERMINATED: 08/23/2023

Defendant**J Tillery**

TERMINATED: 08/23/2023

Defendant**Major Speller**

TERMINATED: 10/24/2023

Defendant**Major Wilson**

TERMINATED: 08/23/2023

Defendant**Major Golbert**

TERMINATED: 10/24/2023

also known as

Jonna Gobert

TERMINATED: 10/24/2023

Defendant**Christopher Lofton**

TERMINATED: 08/23/2023

Defendant**Capt James**

TERMINATED: 08/23/2023

Defendant**Travis Jackson**

TERMINATED: 08/23/2023

Defendant**Vallirie Dallone**

TERMINATED: 10/24/2023

Defendant

Capt Cummings
TERMINATED: 09/06/2023

Defendant

Zachery Dupree
TERMINATED: 08/23/2023

Defendant

Lt Thomas
TERMINATED: 08/23/2023

Defendant

Sgt Marcie
TERMINATED: 08/23/2023

Defendant

Sgt McCray
TERMINATED: 08/23/2023

Defendant

Ricky Kennon

*Never Answered
suit*

Defendant

Yusuf Abdullah
in his/her official & individual capacity

represented by **Yusuf Abdullah**
7403 Hwy 961
Clinton, LA 70722
PRO SE

*Never
Answered
suit*

Defendant

Jessica Manuel
TERMINATED: 08/23/2023

Defendant

Brian Spillers

represented by **Victoria Reed Murry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Valiree Delhonne

represented by **Victoria Reed Murry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jonna Gobert

represented by **Victoria Reed Murry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/17/2023	<u>1</u>	DEFICIENT COMPLAINT against Yusuf Abdullah, Jessie Bellamy, Cummings, Vallirie Dallone, Zachery Dupree, Mark Estes, Colbert, Travis Jackson, James, Johnson, Ricky Kennon, Christopher Lofton, Jessica Manuel, Marciel, McCray, Krystle Simon, Speller, Thomas, Brent Thompson, J Tillery, Curley Victorian, Wilson, Young filed by Jeremy Dewayne Foster. (Attachments: # <u>1</u> Civil cover sheet, # <u>2</u> Exhibit, (crt,Breite, S). Complaint not on approved form. Modified to remove attachment #3 and edit text on 5/19/2023 (Devillier, W). (Entered: 05/18/2023), (QC'ed on 05/19/2023, by Devillier , W)
05/17/2023	<u>2</u>	DEFICIENT MOTION for Leave to Proceed in forma pauperis by Jeremy Dewayne Foster. Motion Ripe Deadline set for 5/17/2023. (crt,Breite, S). Motion/ Application not on approved form. (Entered: 05/18/2023), (QC'ed on 05/19/2023, by Devillier , W)
05/17/2023	<u>3</u>	MOTION for Temporary Restraining Order by Jeremy Dewayne Foster. Motion Ripe Deadline set for 5/17/2023. (crt,Breite, S) (Devillier, W). Modified to add document number and edit file date on 5/19/2023 (Devillier, W). (Entered: 05/18/2023), (QC'ed on 05/19/2023, by Devillier , W)
05/17/2023		CASE Assigned to Judge James D Cain, Jr and Magistrate Judge Kathleen Kay. Motions referred to Magistrate Judge Kathleen Kay. (crt,Crick, S) (Entered: 05/18/2023)
05/19/2023	<u>4</u> 10	PROPOSED MEMORANDUM ORDER Referred to Magistrate Judge Kathleen Kay. Motion Ripe Deadline set for 5/19/2023. (crt,Devillier, W) (Entered: 05/19/2023), (QC'ed on 05/19/2023, by Devillier , W)
05/19/2023	<u>5</u>	DEFICIENT COMPLAINT (With Exhibits) against All Defendants filed by Jeremy Dewayne Foster. (Pleading is duplicate of docs. <u>1</u> & <u>3</u> .) (Attachments: # <u>1</u> Exhibits)(crt,Haik, K) (Entered: 05/23/2023)
05/19/2023	<u>6</u>	DEFICIENT MOTION for Leave to Proceed in forma pauperis by Jeremy Dewayne Foster. (crt,Haik, K) (Entered: 05/23/2023)
05/22/2023	<u>7</u>	MEMORANDUM ORDER: Plaintiff failed to submit documents on approved forms. Plaintiff failed to submit filing fee or a completed IFP application. (Pro Se Deadline to comply with deficiency set for 6/21/2023). Signed by Magistrate Judge Kathleen Kay on 5/22/2023. (Attachments: # <u>1</u> 1983 form, # <u>2</u> ifp form) (crt,Haik, K) (Entered: 05/23/2023)
06/02/2023	<u>8</u>	MOTION for Leave to Proceed in forma pauperis by Jeremy Dewayne Foster. Motions referred to Magistrate Judge Kathleen Kay. Motion Ripe Deadline set for 6/2/2023. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Envelope, # <u>3</u> Proposed order) (crt,Devillier, W) (Entered: 06/08/2023), (QC'ed on 06/08/2023, by Devillier , W)
06/02/2023	<u>10</u>	COMPLAINT against All Defendants filed by Jeremy Dewayne Foster. (Attachments: # <u>1</u> Envelope)(crt,Haik, K) (Entered: 06/13/2023)
06/09/2023	<u>9</u>	MEMORANDUM ORDER granting <u>8</u> Motion for Leave to Proceed in forma pauperis. Initial Partial Filing Fee due in the amount of \$19.50. It is further ordered that plaintiff make payments of 20 percent of income for preceding month until \$350.00 has been paid in full. Clerk manually noticed Prison Accounts

		Officer. Signed by Magistrate Judge Kathleen Kay on 6/9/2023. (crt,Taylor, L) (Entered: 06/09/2023)
06/21/2023		RECEIVED Partial Filing Fee on behalf of Jeremy Dewayne Foster from State of Louisiana Dept of Corrections in the amount of \$25.00, receipt number 500001228. (crt,Williams, G) (Entered: 06/28/2023)
08/04/2023	<u>11</u> <u>1.</u>	REPORT AND RECOMMENDATIONS recommending that the plaintiffs claims that his personal property was stolen/not returned, that he was put on canteen restriction following a unit search, that prison officials are making copies of mail and destroying the original mail and that he lost his job as a result of a bogus write-up be DISMISSED WITH PREJUDICE and claims related to loss of good time credits be DISMISSED WITH PREJUDICE to their being asserted again until the Heck bar in this matter has been lifted. IT IS FURTHER RECOMMENDED that all claims against the following defendants: (1) Brent Thompson, (2) Krystle Simon, (3) Curley Victorian, (4) Mark Estes, (5) Col. Young, (6) J. Tillery, (7) Jessica Manuel, (8) Col. Johnson, (9) Major Wilson, (10) Christopher Lofton, (11) Capt. James, (12) Travis Jackson, (13) Zachery Dupree, (14) Lt. Thomas, (15) Sgt. Marciel, and (16) Sgt. McCray, and be DISMISSED WITH PREJUDICE. Objections to R&R due by 8/18/2023. Signed by Magistrate Judge Kathleen Kay on 8/4/2023. (crt,Stewart, T) (Entered: 08/04/2023)
08/04/2023	<u>12</u> <u>1.</u>	REPORT AND RECOMMENDATIONS recommending that Fosters Motion for Temporary Restraining Order or Preliminary Injunction (doc. 3) be DENIED. Objections to R&R due by 8/18/2023. Signed by Magistrate Judge Kathleen Kay on 8/4/2023. (crt,Stewart, T) (Entered: 08/04/2023)
08/04/2023	<u>13</u> <u>2.</u>	MEMORANDUM ORDER: Clerk is directed to serve plaintiff with two summons forms and one USM 285 form for each defendant to be completed by plaintiff and returned to clerk for service by U S Marshal. Clerk manually noticed order with forms. Pro Se Response due by 9/5/2023. Signed by Magistrate Judge Kathleen Kay on 8/4/2023. (crt,Haik, K) (Entered: 08/07/2023)
08/10/2023		Confirmation of receipt of payment from JEREMY FOSTER in the amount of \$19.50. Transaction posted on 8/10/2023. Receipt number ALAWDC-5649707 processed by Finance Import. (crt,Williams, G) (Entered: 08/10/2023)
08/17/2023	<u>14</u> <u>3.</u>	OBJECTION to <u>11</u> Report and Recommendations, <u>12</u> Report and Recommendations by Jeremy Dewayne Foster. Response to Objection to R&R due by 8/31/2023 (Copy of docket sheet forwarded to plaintiff on this date). (Attachments: # <u>1</u> Envelope)(crt,Taylor, L) (Entered: 08/18/2023)
08/23/2023	<u>15</u> <u>1.</u> <u>4.</u>	JUDGMENT adopting <u>12</u> Report and Recommendations. IT IS ORDERED that plaintiffs Motion for Temporary Restraining Order or Preliminary Injunction be DENIED. IT IS ORDERED, ADJUDGED, and DECREED that the plaintiffs claims that his personal property was stolen/not returned, that he was put on canteen restriction following a unit search, that prison officials are making copies of mail and destroying the original mail and that he lost his job as a result of a bogus write-up be DISMISSED WITH PREJUDICE and claims related to loss of good time credits be DISMISSED WITH PREJUDICE to their being asserted again until the Heck bar in this matter has been lifted. IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all claims against the following defendants: (1) Brent Thompson, (2) Krystle Simon, (3) Curley Victorian, (4) Mark Estes, (5) Col. Young, (6) J. Tillery, (7) Jessica Manuel, (8) Col. Johnson,

	<u>5,</u>	(9) Major Wilson, (10) Christopher Lofton, (11) Capt. James, (12) Travis Jackson, (13) Zachery Dupree, (14) Lt. Thomas, (15) Sgt. Marciel, and (16) Sgt. McCray be DISMISSED WITH PREJUDICE. Signed by Judge James D Cain, Jr on 8/23/2023. (crt,Stewart, T) (Entered: 08/23/2023)
08/28/2023	<u>16</u>	MOTION to Amend/PROPOSED AMENDED COMPLAINT by Jeremy Dewayne Foster. Motions referred to Magistrate Judge Kathleen Kay. Motion Ripe Deadline set for 8/28/2023. (Attachments: # <u>1</u> Envelope)(crt,Haik, K) (Entered: 08/30/2023), (QC'ed on 08/30/2023, by Haik , K)
09/06/2023	<u>17</u>	ELECTRONIC ORDER granting <u>16</u> Motion to Amend Complaint. Signed by Magistrate Judge Kathleen Kay on 9/6/2023. (jud,Kay, Kathleen) (Entered: 09/06/2023), (QC'ed on 09/07/2023, by Enkey , R)
09/06/2023	<u>18</u>	AMENDED COMPLAINT against Yusuf Abdullah, Jessie Bellamy, Vallirie Dallone, Golbert, Ricky Kennon, Speller with Jury Demand filed by Jeremy Dewayne Foster.(crt,Haik, K) (Entered: 09/07/2023)
09/07/2023	<u>19</u> <u>6.</u>	SUMMONS ISSUED as to Yusuf Abdullah, Jessie Bellamy, Vallirie Dallone, Golbert, Ricky Kennon, Speller. Clerk sent summonses, USM 285 forms, docs. 9, 10, 13, & 18 to USM for service. (crt,Haik, K) (Entered: 09/07/2023)
09/20/2023	<u>21</u>	NOTICE OF APPEAL filed by Jeremy Dewayne Foster. FEE STATUS: NOT PAID (Attachments: # <u>1</u> Envelope)(crt,WalkerSld, B) (Entered: 09/25/2023)
09/22/2023	<u>7</u> <u>20</u>	SUMMONS Returned Executed via USM 285 form. Yusuf Abdullah served on 9/21/2023, answer due 10/12/2023. (crt,Haik, K) (Entered: 09/25/2023)
09/25/2023	<u>22</u>	FEE LETTER requesting payment of appeal filing fee sent to Jeremy Dewayne Foster re <u>21</u> Notice of Appeal. (Attachments: # <u>1</u> Application to Proceed In Forma Pauperis)(crt,WalkerSld, B) (Entered: 09/25/2023)
09/29/2023		USCA Case Number 23-30682 for <u>21</u> Notice of Appeal filed by Jeremy Dewayne Foster. (crt,WalkerSld, B) (Entered: 09/29/2023)
10/10/2023	<u>8</u> <u>23</u>	SUMMONS Returned Executed via USM 285 form. Jessie Bellamy served on 10/3/2023, answer due 10/24/2023; Vallirie Dallone served on 10/3/2023, answer due 10/24/2023; Golbert served on 10/3/2023, answer due 10/24/2023; Ricky Kennon served on 10/3/2023, answer due 10/24/2023; Speller served on 10/3/2023, answer due 10/24/2023. (crt,Haik, K) (Entered: 10/12/2023)
10/13/2023		Confirmation of receipt of payment from JEREMY FOSTER in the amount of \$16.60. Transaction posted on 10/13/2023. Receipt number ALAWDC-5722694 processed by Finance Import. (crt,Williams, G) (Entered: 10/13/2023)
10/16/2023	<u>24</u>	MOTION to Proceed In Forma Pauperis on Appeal by Jeremy Dewayne Foster. Motion Ripe Deadline set for 10/16/2023. (Attachments: # <u>1</u> Envelope) (crt,WalkerSld, B) (Additional attachment(s) added on 10/18/2023: # <u>2</u> Proposed Order) (WalkerSld, B). (Attachment 2 replaced on 10/23/2023) (WalkerSld, B). (Entered: 10/18/2023), (QC'ed on 10/18/2023, by WalkerSld , B)
10/18/2023		Motions Transferred regarding <u>24</u> MOTION to Proceed In Forma Pauperis on Appeal. Motions referred to Judge James D Cain, Jr. (crt,WalkerSld, B) (Entered: 10/18/2023)

10/19/2023	<u>9, 25</u> 	(DEFICIENT?) ANSWER to <u>1</u> Complaint, <u>18</u> Amended Complaint, <u>10</u> Complaint by Yusuf Abdullah. (Attachments: # <u>1</u> Envelope)(crt,Haik, K) Modified to add deficiency notation on 10/24/2023 (Haik, K). (Entered: 10/23/2023)
10/19/2023 <i>Should have been Default Judgment</i>	<u>10, 27</u> 	NOTICE of Deficiency to Yusuf Abdullah regarding <u>25</u> Answer to Complaint. Reason: 1. An original signature of an attorney or a party is required by Fed.R.Civ.P.11. 2. This document is not accompanied by a certificate of service as required by Fed.R.Civ.P. 5. (crt,Haik, K) (Entered: 10/24/2023)
10/23/2023 <i>Affirmative Relief Should have been granted</i>	<u>26</u> 	ORDER granting <u>24</u> Motion for Leave to Appeal in forma pauperis. Initial Partial Filing Fee due in the amount of \$6.83. It is further ordered that plaintiff make payments of 20 percent of income for preceding month until \$505.00 has been paid in full. Clerk manually noticed Prison Accounts Officer. Signed by Judge James D Cain, Jr on 10/23/2023. (crt, WalkerSld, B) (Entered: 10/23/2023)
10/24/2023	<u>28</u> 	First MOTION for Extension of Time to File Answer re <u>10</u> Complaint with consent sought but not yet obtained by Jessie Bellamy, Brian Spillers, Jonna Gobert, Vallirie Dallone. Motions referred to Kathleen Kay. Motion Ripe Deadline set for 10/24/2023. (Attachments: # <u>1</u> Proposed order)(Attorney Victoria Reed Murry added to party Vallirie Dallone(pty:dft))(aty,Murry, Victoria) Modified to edit docket entry text and correct filers on 10/24/2023 (Haik, K). (Entered: 10/24/2023), (QC'ed on 10/25/2023, by Haik , K)
10/25/2023	<u>29</u> 	ORDER granting <u>28</u> Motion for Extension of Time to Answer. Jessie Bellamy answer due 11/8/2023; Valiree Delhonee answer due 11/8/2023; Jonna Gobert answer due 11/8/2023; Brian Spillers answer due 11/8/2023. Signed by Magistrate Judge Kathleen Kay on 10/25/2023. (crt,Haik, K) (Entered: 10/25/2023)
11/08/2023	<u>30</u> 	First MOTION for Summary Judgment by Jessie Bellamy, Brian Spillers, Jonna Gobert, Valiree Delhonee. Motions referred to Kathleen Kay. (Attachments: # <u>1</u> Statement of material facts, # <u>2</u> Memorandum / Brief, # <u>3</u> Proposed order, # <u>4</u> Exhibit "A" Administrative Remedy Procedure, # <u>5</u> Exhibit "B" Acknowledgement of Receipt, # <u>6</u> Exhibit "C" Sworn Statement of <u>J. Pelican</u> , # <u>7</u> Exhibit "D" Complaint)(aty,Murry, Victoria) Modified to add filers and edit docket entry text on 11/9/2023 (Haik, K). (Entered: 11/08/2023), (QC'ed on 11/09/2023, by Haik , K)
11/09/2023	<u>14, 31</u> 	NOTICE of Motion Setting regarding: <u>30</u> First MOTION for Summary Judgment. Motions referred to Magistrate Judge Kathleen Kay. (crt,Haik, K) (Entered: 11/09/2023)
11/16/2023	<u>15, 32</u> 	OBJECTION re <u>30</u> First MOTION for Summary Judgment filed by Jeremy Dewayne Foster. (Attachments: # <u>1</u> Envelope)(crt, Taylor, L) (Entered: 11/17/2023)
11/27/2023	<u>33</u>	LETTER from Jeremy Foster to Court re the prisons procedure for processing inmate funds for court fees. (Attachments: # <u>1</u> Envelope) (crt, WalkerSld, B) (Entered: 11/28/2023)
12/01/2023	<u>16, 34</u> 	AMENDED DOCUMENT by Jessie Bellamy. Amendment to <u>30</u> First MOTION for Summary Judgment <u>AMENDED CERTIFICATE OF SERVICE</u> . (aty,Murry, Victoria) (Entered: 12/01/2023), (QC'ed on 12/11/2023, by Haik , K)
12/01/2023		RECEIVED Partial Filing Fee on behalf of Jeremy Dewayne Foster in the amount of \$50.00, receipt number 500001954. (crt, Breite, S) (Entered: 12/01/2023)

12/07/2023	<u>17,35</u> <u>I was shipped</u>	NOTICE of Change of Address by Jeremy Dewayne Foster. Address updated by clerk on this date. Copy of docket sheet sent to plaintiff on 12/7/2023. (Attachments: # 1 Envelope)(crt,Taylor, L) (Entered: 12/11/2023)
12/18/2023 <u>1</u> <u>Committed Fraud</u>	<u>36</u> <u>18,</u>	SECOND AMENDED CERTIFICATE OF SERVICE re <u>30</u> First MOTION for Summary Judgment by Valiree Delhonn, Brian Spillers, Jessie Bellamy, Jonna Gobert. (aty,Murry, Victoria) Modified to more accurately identify pleading, add filers, and create docket entry relationship on 12/19/2023 (Haik, K). (Entered: 12/18/2023), (QC'ed on 12/19/2023, by Haik , K)
12/18/2023	<u>36</u> <u>19,</u>	SECOND AMENDED CERTIFICATE OF SERVICE re <u>30</u> First MOTION for Summary Judgment by Valiree Delhonn, Brian Spillers, Jessie Bellamy, Jonna Gobert. ADMINISTRATIVE ENTRY as this document was electronically filed in error as 36 MOTION to Amend/Correct. (crt,Haik, K) Modified to add document number on 12/19/2023 (Haik, K). (Entered: 12/19/2023)
01/02/2024	<u>37</u>	USCA JUDGMENT/MANDATE (certified copy) as to <u>21</u> Notice of Appeal filed by Jeremy Dewayne Foster that the appeal is DISMISSED for want of jurisdiction. (USCA #23-30682) (crt,WalkerSld, B) Modified text on 1/3/2024 (WalkerSld, B). (Entered: 01/03/2024)
01/10/2024 <u>when the change</u>	<u>38</u> <u>20,</u>	ELECTRONIC MINUTE ENTRY issued by the Clerk. Case <u>reassigned to</u> Magistrate Judge Thomas P LeBlanc. <u>Magistrate Judge Kathleen Kay no longer</u> assigned to case. All future filings should bear the name of the new judge assignment. Motions referred to Magistrate Judge Thomas P LeBlanc. Approved by Judge Terry A Doughty on 1/10/2024. (crt,Kiper, C) (Entered: 01/10/2024)
01/12/2024	<u>39</u> <u>21,</u>	AMENDED DOCUMENT by Jessie Bellamy. Amendment to 36 Certificate of Service, <i>also by Major Brian Spillers, Major Jonna gobert and Captain Valiree Delhome.</i> (aty,Murry, Victoria) (Entered: 01/12/2024), (QC'ed on 01/12/2024, by Devillier , W)
01/18/2024		RECEIVED Partial Filing Fee on behalf of Jeremy Dewayne Foster from State of Louisiana Dept. of Corrections in the amount of \$40.00, receipt number 500002138. (crt,Bowman, A) (Entered: 01/18/2024)
01/19/2024		Confirmation of receipt of payment from JEREMY FOSTER in the amount of \$20.00. Transaction posted on 1/18/2024. Receipt number ALAWDC-5829432 processed by Finance Import. (crt,Williams, G) (Entered: 01/19/2024)
02/05/2024	<u>40</u> <u>22,</u>	MOTION to Amend/Correct <u>1</u> Complaint by Jeremy Dewayne Foster. Motions referred to Magistrate Judge Thomas P LeBlanc. Motion Ripe Deadline set for 2/5/2024. (Attachments: # 1 Envelope)(crt,Haik, K) (Entered: 02/07/2024), (QC'ed on 02/07/2024, by Haik , K)
03/13/2024		Confirmation of receipt of payment from JEREMY FOSTER in the amount of \$10.00. Transaction posted on 3/8/2024. Receipt number ALAWDC-5877481 processed by Finance Import. (crt,Williams, G) (Entered: 03/13/2024)
04/10/2024		Confirmation of receipt of payment from JEREMY FOSTER in the amount of \$19.00. Transaction posted on 4/10/2024. Receipt number ALAWDC-5910967 processed by Finance Import. (crt,Williams, G) (Entered: 04/10/2024)
04/18/2024	<u>41</u>	REQUEST from Jeremy Foster for status update. Clerk mailed docket sheet on 04/18/2024. (Public entry, but no electronic notice.) (Attachments: # 1 Envelope)

		(crt,Williams, G) (Entered: 04/18/2024)
05/09/2024	<u>23</u> <u>42</u>	Writ of Laches Estoppel by Enforcement of Saving to Suitors - Jury Trial 28 USC 1333(1) filed by Jeremy Dewayne Foster. (Attachments: # <u>1</u> Envelope) (crt,Devillier, W) (Entered: 05/09/2024)
05/13/2024	<u>24</u> <u>43</u>	Writ of In Rem Proceeding Against Warden Brent Thompson for J-pay Tablet (property) by Jeremy Dewayne Foster. (Attachments: # <u>1</u> Envelope)(crt,Haik, K) (Entered: 05/21/2024)
05/15/2024		Confirmation of receipt of payment from JEREMY FOSTER in the amount of \$18.00. Transaction posted on 5/14/2024. Receipt number ALAWDC-5943456 processed by Finance Import. (crt,Williams, G) (Entered: 05/15/2024)
05/22/2024	<u>25</u> <u>44</u>	REPORT AND RECOMMENDATIONS recommending that the <u>30</u> First MOTION for Summary Judgment filed by Jonna Gobert, Brian Spillers, Jessie Bellamy, Valiree Delhonnie be GRANTED and that suit be DISMISSED WITHOUT PREJUDICE. Objections to R&R due by 6/5/2024. Signed by Magistrate Judge Thomas P LeBlanc on 5/22/2024. (crt,Stewart, T) (Entered: 05/22/2024)
06/03/2024	<u>26</u> <u>45</u>	OBJECTION to <u>44</u> Report and Recommendations by Jeremy Dewayne Foster. Response to Objection to R&R due by 6/17/2024 (Attachments: # <u>1</u> Envelope) (crt,Taylor, L) (Entered: 06/03/2024)

Whole Proceeding Malum in Se

NOTICE FROM U.S. DISTRICT COURT - WESTERN DISTRICT OF LOUISIANA

Jeremy Dewayne Foster (PrisID: 609509)
David Wade Correctional Center
670 Bell Hill Rd
Homer, LA 71040

Case: 2:23-cv-00661 #44
10 pages printed: Wed, 22 May 2024 16:41:47

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JEREMY DEWAYNE FOSTER

DOCKET NO. 2:23-cv-00661

VERSUS

JUDGE JAMES D. CAIN, JR.

BRENT THOMPSON, ET AL

MAGISTRATE JUDGE LEBLANC

REPORT AND RECOMMENDATION

Presently before the court is a Motion for Summary Judgment filed by defendants Warden Jessie Bellamy, Major Brian Spillers, Major Jonna Gobert and Captain Valiree Delhone on November 8, 2023. Rec. Doc. 30. The plaintiff filed an objection to the motion on November 16, 2023. Rec. Doc. 32. This matter is now ripe for review.

For the following reasons, **IT IS ORDERED** that the defendants' Motion for Summary Judgment (rec. doc. 30) be **GRANTED**, and this suit be **DISMISSED WITHOUT PREJUDICE**.

I. BACKGROUND

Foster filed an original and amended complaint in this Court, naming multiple defendants and raising the following four claims: (1) violation of religious freedoms; (2) personal property stolen/not returned, lost good time credit and canteen restriction, following a unit search; (3) prison officials making copies of mail and destroying the original mail; and (4) lost job as a result of a "bogus write-up." Docs. 1, 10. The Court dismissed the claims related to the unit search, his mail, and the loss of a job, leaving only the religious freedom claim. Rec. Doc. 15. Specifically, plaintiff complains that he was not provided with a noonday meal to consume during the night while he was observing a religious fast in connection with his celebration of Ramadan and that he

was not allowed to engage in group prayer after breakfast during Ramadan due to staff shortages at Allen Correction Center (ACC).

Defendants seek summary judgment in this matter, arguing that there is no genuine issue of material fact that plaintiff failed to exhaust his Administrative Remedies, as admitted in his Complaint (rec. doc. 10, p. 2, ¶ II) and confirmed by the ACC ARP Screening officer, J. Pelican, in his sworn statement attached to the instant motion (rec. doc. 30, att. 6). Plaintiff's ARP (ALC-2023-369) was rejected due to its violation of ACC policies and procedures because it was too voluminous. *Id.* Plaintiff was advised to submit a condensed version of his ARP if he so chose, but he failed to do so. *Id.*

Plaintiff's objection to the defendants' motion does not contest the allegation that he failed to exhaust his administrative remedies. Rec. Doc. 32. Rather, he simply argues that the motion is "illegal" as it "violates the 14th Amendment of Substantive Due Process." *Id.* at p. 1.

II. LAW & ANALYSIS

A. *Legal Standards*

1. *Summary Judgment Standard*

A court should grant a motion for summary judgment when the pleadings, including the opposing party's affidavits, "show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c); *see also Celotex Corp. v. Catrett*, 106 S.Ct. 2548, 2553 (1986). The party moving for summary judgment is initially responsible for demonstrating the reasons justifying the motion for summary judgment by identifying portions of pleadings and discovery that show the lack of a genuine issue of material fact for trial. *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995). The court must deny the moving party's motion for summary judgment if the movant fails to meet this burden. *Id.*

Once the movant makes this showing, the burden then shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505, 2510 (1986). The burden requires more than mere allegations or denials of the adverse party's pleadings. The non-moving party must demonstrate by way of affidavit or other admissible evidence that there are genuine issues of material fact or law. *Celotex Corp.*, 106 S.Ct. at 2553. There is no genuine issue of material fact if, viewing the evidence in the light most favorable to the non-moving party, no reasonable trier of fact could find for the non-moving party. *Tolan v. Cotton*, 134 S.Ct. 1861, 1866 (2014). Furthermore, a court may not make credibility determinations or weigh the evidence in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 120 S.Ct. 2097, 2110 (2000). However, the nonmovant must submit "significant probative evidence" in support of his claim. *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 118 (5th Cir. 1990). If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. *Anderson*, 106 S.Ct. at 2511.

"A motion for summary judgment cannot be granted simply because there is no opposition, even if failure to oppose violated a local rule. The movant has the burden of establishing the absence of a genuine issue of material fact and, unless he has done so, the court may not grant the motion, regardless of whether any response was filed." *Hetzell v. Bethlehem Steel Corp.*, 50 F.3d 360, 362 n. 3 (5th Cir. 1995) (quoting *Hibernia Nat. Bank v. Administracion Cent. Sociedad Anonima*, 776 F.2d 1277, 1279 (5th Cir. 1985)). Failure to file an opposition and statement of contested material facts, however, results in the court deeming statements of uncontested material facts admitted for the purposes of the motion. Fed. R. Civ. P. 56(e)(2), L.R. 56.2

Nevertheless, a motion for summary judgment for failure to exhaust is treated slightly differently. See, e.g., *Dillon v. Rogers*, 596 F.3d 260, 272-73 (5th Cir. 2010). "Exhaustion

resembles personal jurisdiction and venue in that it is an affirmative defense that allows defendants to assert that plaintiffs have not invoked the proper forum for resolving a dispute." *Id.* at 272 (citing *Pavey v. Conley*, 544 F.3d 739, 741 (7th Cir. 2008)). Stated differently, exhaustion of administrative remedies is a "rule of judicial administration" that is akin to doctrines like 'abstention, finality, and ripeness . . . that govern the timing of federal court decision making.'" *Id.* (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (other citation omitted)). Since exhaustion of administrative remedies is a "threshold issue that courts must address to determine whether litigation is being conducted in the right forum at the right time, we conclude that judges may resolve factual disputes concerning exhaustion without the participation of a jury." *Id.* (citation and footnote omitted).

2. *Prison Litigation Reform Act ("PLRA") Exhaustion Requirement*

The Prison Litigation Reform Act ("PLRA") provides "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002) (citation omitted). The Supreme Court has described the PLRA exhaustion provision as a "mandatory exhaustion" statute and has "reject[ed] every attempt to deviate . . . from its textual mandate." *Ross v. Blake*, 578 U.S. 632, 639-40 (2016); see also *Jones v. Bock*, 549 U.S. 199, 211 (2007) ("There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court.") (*citing Porter*, 534 U.S. at 524).

The only "textual exception to mandatory exhaustion" in the PLRA is the "availability" of administrative remedies. *Ross*, 578 U.S. at 642. To determine what remedies are "available," and thus must be exhausted, courts look to "the applicable procedural rules . . . defined . . . by the prison grievance process itself." *Jones*, 549 U.S. at 218. Administrative relief is "available" so long as the prison administrator has the authority to take some "action in response to a complaint," even if that relief does not provide the precise "remedial action an inmate demands to the exclusion of all other forms of redress." *Booth v. Churner*, 532 U.S. 731, 736 (2001) ("An inmate must exhaust irrespective of the forms of relief sought and offered through administrative avenues."). As a result, "a court may not excuse a failure to exhaust, even to take [special] circumstances into account." *Ross*, 578 U.S. at 639; *see also* *Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012) (recognizing that "district courts have no discretion to excuse a prisoner's failure to properly exhaust the prison grievance process before filing their complaint" and "have no discretion to waive the PLRA's pre-filing exhaustion requirement").

The Fifth Circuit has taken a strict approach to the exhaustion requirement. *Wilson v. Epps*, 776 F.3d 296, 299-300 (5th Cir. 2015) (quoting *Dillon*, 596 F.3d at 268) ("[P]risoners must not just substantially comply with the prison's grievance procedures, but instead must 'exhaust available remedies properly.'") The Fifth Circuit has also recognized that "[w]hen a defendant asserts the defense of lack of exhaustion, the district court should rule on [the exhaustion] issue before allowing the case to proceed to the merits." *Nottingham v. Finsterwald*, 582 F. App'x 297, 297-98 (5th Cir. 2014) (citing *Dillon*, 596 F.3d at 272-73)). And exhaustion must have occurred before the lawsuit is filed. *Gonzalez*, 702 F.3d at 788 ("[T]he case must be dismissed if available administrative remedies were not exhausted."); *see also* *Covarrubias v. Foxworth*, No. 6:13-CV-812, 2017 U.S. Dist. LEXIS 46267, 2017 WL 1159767, at *3 (E.D. Tex. Mar. 29, 2017) (looking

to whether administrative remedies had been exhausted "at the time of the filing of the original complaint" rather than any amended complaint). Also, when a prisoner "can no longer comply with the exhaustion requirement, because the deadline for completing the administrative remedy has passed, the court may dismiss the suit with prejudice." *McCoy v. Zook*, No. 3:20-CV-1051-B(BT), 2021 U.S. Dist. LEXIS 39475, 2021 WL 811854, at * 6 (N.D. Tex. Feb. 11,2021), rep. and rec. adopted, 2021 U.S. Dist. LEXIS 39349, 2021 WL 807249 (N.D. Tex. Mar. 3, 2021) (citing *Johnson v. La. Dep't of Pub. Safety & Corr.*, 468 F.3d 278, 280-81 (5th Cir. 2006) (per curiam); *Howard v. Gensil*, Civ. No. H-13-105, 2013 U.S. Dist. LEXIS 175000, 2013 WL 6440952 at *2 (S.D. Tex. Dec. 9, 2013) ("Because the deadlines for administrative remedies have passed, the action is properly dismissed with prejudice.") Courts are not "to inquire whether administrative procedures 'satisfy minimum acceptable standards' of fairness and effectiveness"; rather, "prisoner[s] must exhaust such administrative remedies as are available, whatever they maybe." *Alexander v. Tippah Cnty.*, 351 F.3d 626, 630 (5th Cir. 2003) (per curiam) (citing *Booth*, 532 U.S. at 740 n.5 and *Wright v. Hollingsworth*, 260 F.3d 357, 358 (5th Cir. 2001)).

B. Application

Plaintiff failed to exhaust administrative remedies related to the remaining issue in this suit, the violation of his religious freedoms. In support of the instant motion, the defendants rely on a case virtually identical to the matter presently before the Court—*Savinell v. Epps*, 3:14CV516-LRA, 2015 WL 5021770 (S.D. MS, 8/24/2015) (unpublished opinion).

Savinell was an inmate at Southern Mississippi Correctional Institute (SMCI) and filed a 42 page complaint against Epps, claiming that he was treated as a slave while in the custody of the Mississippi Department of Corrections, being forced to work without pay in the field operations and the kitchen; that he had no real access to the law library; that he was denied free postage to

mail letters to the newspapers; he was placed in segregation for 60 days with no exercise; and, that his bond was revoked without cause in 2009. The defendant, Epps, filed summary judgment seeking dismissal of the plaintiff's claims because Savinell failed to complete the entire administrative review process before filing suit. An affidavit was submitted stating that Savinell had submitted a voluminous grievance through the ARP at SMCI regarding numerous issues. The grievance was sent back to Savinell with a note advising him that the volume of the material was too great and that the ARP rules required that each grievance submitted could only address one issue. Savinell was afforded an opportunity to correct and refile his grievance. The affidavit further stated Savinell did not send any additional grievance for any issue. When Savinell filed his suit in the district court, the form asked if he had completed the ARP regarding his claims, and he wrote: "the ARP Department said the ARP was too long."

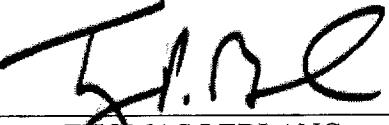
The court in *Savinell* ruled that the PLRA governed all of Savinell's claims and thus he was required to complete the ARP process in its entirety before filing suit under §1983, citing the provisions of the statute: "42 U.S.C. §1997 (e), provides that 'no action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.'" The court noted Savinell admitted in his complaint that his ARP was rejected for having too many issues, and he also admitted that fact under oath at the omnibus hearing conducted by the court. The court held that the defendant Epps had submitted competent proof of Savinell's non-exhaustion, and granted the Motion for Summary Judgment, dismissing the plaintiff's claims.

III. CONCLUSION

There is no genuine issue of material fact that Foster did not exhaust his administrative remedies in this case. For the foregoing reasons,

IT IS RECOMMENDED that the instant Motion for Summary Judgment (doc. 30) be **GRANTED** and that suit be **DISMISSED WITHOUT PREJUDICE**.

THUS DONE AND SIGNED in chambers this 22nd day of May, 2024.



THOMAS LEBLANC
UNITED STATES MAGISTRATE JUDGE

U.S. District Court

Western District of Louisiana

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Docket Text:

REPORT AND RECOMMENDATIONS recommending that the [30] First MOTION for Summary Judgment filed by Jonna Gobert, Brian Spillers, Jessie Bellamy, Valiree Delhone be GRANTED and that suit be DISMISSED WITHOUT PREJUDICE. Objections to R&R due by 6/5/2024. Signed by Magistrate Judge Thomas P LeBlanc on 5/22/2024. (crt,Stewart, T)