APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[filed August 10, 2017]

No. 16-12108
Non-Argument Calendar

D.C. Docket No. 4:13-cv-00372-WS-CAS

CONRAAD L HOEVER,

Plaintiff-Appellant,

versus

P. BELLEIS,
Chief of Security Colonel,
J HALL,
Deputy Chief of Security Major,
K. HAMPTON,
Group Supervisor Sergeant,
J KELLEY,
Group Supervisor,
T. KRISS,
Correction Officer,
W MESSER,
Officer in Charge Captain
J SERRATO,
Correction Officer,

Defendants-Appellees.

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

(August 10, 2017)

Before WILLIAM PRYOR, JORDAN and ROSENBAUM, Circuit Judges.

PER CURIAM:

Conraad Hoever, a Florida prisoner, appeals *pro se* the partial dismissal and partial summary judgment against his complaint about the violation of his civil rights by prison officers who placed him in disciplinary confinement for 20 days and denied him access to mail and religious materials. 42 U.S.C. § 1983. The district court dismissed Hoever's request for monetary damages and his complaints that he was disciplined without due process; that officers confiscated materials he needed to "write his family" and "the courts," in violation of his rights to free speech and association and to access the courts under the First Amendment; that he was denied lunch, in violation of the Eighth Amendment prohibition against cruel punishment; and that Colonel Belleis and Deputy Chief Hall were liable as supervisors for denying grievances about their subordinates' conduct. Later, the district court entered summary judgment against Hoever's complaint that his retention of a Bible in Spanish but the denial of a Bible in English and devotional materials during his confinement violated his rights under the Free Exercise Clause of the First Amendment. We affirm.

We review *de novo* the dismissal of a complaint for failure to state a claim for relief and a summary judgment. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003) (failure to state a claim); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1223 (11th Cir. 2004) (summary judgment). We construe liberally *pro se* pleadings, *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003), accept as true the allegations in the complaint, and draw all reasonable inferences in favor

of the plaintiff, *Hill* 321 F.3d at 1335; *Midrash*, 366 F.3d at 1223.

Hoever failed to state a claim that the officers violated his right to due process. A prisoner is entitled to due process only when a change in his conditions of confinement is so severe that it lengthens his term of imprisonment or when he is deprived of a benefit ordinarily bestowed on inmates and the deprivation "imposes atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484, 487 (1995). Hoever was placed in disciplinary confinement for 20 days for disrespecting an officer, was deprived of his personal and legal mail, and lost eligibility for some prison privileges, but "[d]iscipline by prison officials in response to . . . [Hoever's] misconduct falls within the expected perimeters of" prison life and did not implicate the liberty interests protected by the Due Process Clause, *id.* at 485. *See Rodgers v. Singletary*, 142 F.3d 1252, 1252–53 (11th Cir. 1998) (confinement for two months pending the resolution of disciplinary charges did not amount to a prisoner being "deprived of a constitutionally protected liberty interest"); *Chandler v. Baird*, 926 F.2d 1057, 1060 (11th Cir. 1991) ("[T]he Due Process Clause does not directly protect an inmate from changes in the conditions of his confinement, . . as long as the condition to which the prisoner is subjected is not otherwise violative of the Constitution or outside the sentence imposed upon him . . . ."). Hoever alleged that he was "denied [his] rights to call witnesses in his defense [during his discipline hearing] and punish[ed] . . . without . . . [receiving] proper process," but he did not have "a protected liberty interest that . . . entitle[d] him to. . . procedural protections," *see Sandin*, 515 U.S. at 487.

Hoever also failed to state a claim that Officer

Serrato infringed on Hoever's rights to free speech and to access the courts. Hoever alleged that Officers Serrato and Kriss inventoried and stored Hoever's personal and legal mail and that Hoever later requested the materials from Kriss. No plausible inference could be drawn from Serrato's conduct that he intended to "chill[], inhibit[], or interfere[] with [Hoever's] ability to speak" or associate with his family, *see Al-Amin v. Smith*, 511 F.3d 1317, 1334 (11th Cir. 2008), or to "frustrate[] or impede[] [Hoever's] efforts to pursue a nonfrivolous legal claim," *see Bass v. Singletary*, 143 F.3d 1442, 1445 (11th Cir. 1998).

Hoever waived his right to contest the dismissal of his complaint that Kriss interfered with his access to the courts. The district court dismissed Hoever's complaint for failure to allege an actual injury. *See id.* at 1445; *see also Chandler*, 926 F.2d 1063 (if "alleged deprivations are of a minor and short-lived nature and do not implicate general policies" then "an inmate [must] articulate facts indicating some prejudice such as being unable to do timely research on a legal problem or being procedurally or substantively disadvantaged in the prosecution of a cause of action"). The district court twice invited Hoever to "submit an amended complaint . . [containing] facts which would support []his [access to courts] claim," but he omitted that claim from his amended pleading. Hoever "waived [his] right to complain about [the dismissal] . . . after . . . [foregoing] the opportunity to" present additional allegations to support his claim. *See Tamimi v. Howard Johnson Co.*, 07 F.2d 1550, 1555 (11th Cir. 1987).

Hoever abandoned his complaint that Kriss infringed his right to free speech. "An amended

pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary." *Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir. 2006) (internal quotation marks and citation omitted). Although the two orders issued by the district court informed Hoever that it had yet to rule on his "First Amendment claims for free speech and free exercise of religion," Hoever addressed only the Free Exercise Clause in his amended complaint. Because Hoever omitted the issue of free speech from his amended complaint, that issue was "no longer a part of [his] averments against [Kriss]." *See id.* We deem abandoned Hoever's complaint about the violation of his right to free speech. *See id.*

Hoever failed to state a plausible claim for relief based on the Eighth Amendment. To prove a violation of the Eighth Amendment, Hoever had to establish that "the condition he complain[ed] of [was] sufficiently serious to violate the Eighth Amendment" such that it "pose[d] an unreasonable risk of serious damage to his future health or safety" and that prison personnel were deliberately indifferent to his condition. *See Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004). Hoever alleged that the officers deprived Hoever of lunch. Hoever did not assert that missing one meal worsened his health.

Hoever also failed to state a claim against Colonel Belleis and Deputy Chief Hall. "[I]t is well established in this Circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability." *Keith v. DeKalb Cty., Ga.*, 749 F.3d 1034, 1047 (11th Cir. 2014) (quoting *Cottone v. Jenne*,

326 F.3d 1352, 1360 (11th Cir. 2003)). Liability attaches only if a supervisor "directly participated in the unconstitutional conduct" or there is a causal connection between the supervisor's actions and the alleged constitutional violation. *See Cottone*, 326 F.3d at 1360. To prove a causal connection, Hoever had to establish that the supervisors' "custom or policy . . . resulted in deliberate indifference to constitutional rights," or that a reasonable inference exists that "the supervisor[s] directed [their] subordinates to act unlawfully or knew that [they] would act unlawfully and failed to stop them from doing so." *See id.* Hoever failed to identify a policy that resulted in a constitutional violation, and his allegation that the supervisors denied grievances against their subordinates was insufficient to establish that the supervisors instigated or encouraged unlawful conduct.

Hoever could not recover compensatory or punitive damages from Kriss. Hoever waived any complaint that he had against Kriss in her official capacity when, in response to the motion to dismiss, Hoever disclaimed "that he [was] su[ing] Defendants in their official capacity for monetary damages." After the district court dismissed most of Hoever's complaint, the only causes of action that remained involved Kriss's infringement on Hoever's rights to free speech and to the free exercise of religion. The Prison Litigation Reform Act bars a prisoner from commencing a "civil action . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). Hoever did not allege he suffered a physical injury because of Kriss's constitutional violations, so Hoever's recovery was necessarily limited to nominal damages. *See Harris v. Garner*, 216 F.3d 970, 984–85

(11th Cir. 2000). Hoever argues that he incurred a sinus injury when exposed to chemical agents while in disciplinary confinement, but he challenged the conditions of his confinement on the ground it violated his right to due process. Because no due process violation occurred, Hoever was not entitled to any damages on the basis of his sinus injury.

Hoever failed to establish that Kriss violated his rights under the Free Exercise Clause. To survive summary judgment, Hoever had to establish that Kriss imposed a "substantial burden" on his religious practices. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 565 (1993) ("[o]ur cases have established that [t]he free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice" (internal quotation marks omitted)). Our definition of "substantial burden" is derived from precedents interpreting the Religious Land Use and Institutionalized Persons Act and the Religious Freedom Restoration Act, which "provide greater protection for religious exercise than is available under the First Amendment," *Holt v. Hobbs*, 135 S. Ct. 853, 859–60 (2015). *See Midrash*, 366 F.3d at 1226–27 (discussing precedents of the United States Supreme Court and this Court). Those precedents hold that a substantial burden occurs if the conduct complained of "completely prevents the individual from engaging in religiously mandated activity, or . . . requires participation in an activity prohibited by religion" and, at a minimum, must have "something more than an incidental effect on religious exercise." *Id.* at 1227; *see also Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 717–18 (1981). Hoever's deprivation of a Bible written in English and devotional materials did not thwart his religious exercise. He testified that,

while in disciplinary confinement, he "prayed" and "quote[d] some [Bible] verses [he] remembered." Hoever later prepared an affidavit stating that "reading [his] daily devotional and the [accompanying] Bible texts . . . is [his] spiritual food" and he "compared" his failure to engage in his studies to "an abomination and becoming a periah [sic] of the Christian faith." Hoever's averments established that engaging in daily studies was beneficial, not mandatory. We cannot say that the brief denial of Hoever's study materials imposed a "substantial burden" on his religious practice.

We **AFFIRM** the partial dismissal and partial summary judgment against Hoever's complaint.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[filed March 29, 2016]

CONRAAD L. HOEVER,
Plaintiff,

v. 4:13cv372-WS/CAS

P. BELLELIS, et al.
Defendants.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation docketed February 24, 2016. See Doc. 73. The magistrate judge recommends that Defendant Kriss's motion for summary judgment be granted. Having reviewed the record, including the plaintiff's objections to the report and recommendation, the court finds that the magistrate judge's report and recommendation should be adopted.

Accordingly, it is ORDERED:

1. Defendant Kriss's motion for summary judgment (doc. 68) is GRANTED.
2. The clerk shall enter judgment stating: "All claims against all defendants are DISSMISSED WITH PREJUDICE."

DONE AND ORDERED THIS 29th day of March 2016.

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

[Filed February 24, 2016]

CONRAAD L. HOEVER,

Plaintiff,

vs. **Case No. 4:13cv372-WS/CAS**

P. BELLELIS, et al.,

Defendants.

SECOND REPORT AND RECOMMENDATION

Previously, the seven named Defendants filed a motion to dismiss Plaintiff's Complaint for failure to state a claim upon which relief may be granted pursuant to FED. R. CIV. P. (12)(b)(6). ECF. No. 35. A Report and Recommendation, ECF No. 45, was entered recommending the motion to dismiss be granted as to all claims except Plaintiff's First Amendment claim for free speech and the free exercise of religion against Defendants Kriss in her individual capacity only, and limited to nominal damages. It was also recommended that Plaintiff be provided an opportunity to submit an amended complaint if he could provide facts in support of his access to courts claim. ECF No. 45. The Report and Recommendation was adopted, ECF No. 49, and Plaintiff filed a first amended complaint. ECF No. 53. Defendant Kriss filed an answer, ECF No. 54, and discovery was opened. ECF No. 55. At the conclusion of the discovery

period, Defendant Kriss filed a motion for summary judgment. ECF No. 68. Plaintiff filed an amended response in opposition to summary judgment. ECF No. 71.[1]

Allegations of the Amended Complaint, ECF No. 53

Plaintiff did not include allegations concerning the denial of access to courts. He alleged that on March 16, 2013, Defendant Kriss inventoried his property when Plaintiff was placed in confinement. ECF No. 53 at 11. Defendant Kriss put all his religious materials in storage except for a Spanish Bible. Plaintiff requested "his daily devotionals" and his English Bible and told Defendant Kriss he did not know Spanish enough to use the Spanish Bible. Defendant Kriss told Plaintiff she was not going to come back and would not bring him anything. Plaintiff alleged that he spent twenty-six days in confinement and was unable to practice his religion. *Id.* He claims Defendant Kriss violated his First Amendment right to freely exercise his religion. *Id.* at 12.

I. Legal standards governing a motion for summary judgment

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).

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[1] Plaintiff was given leave to file an amended response because his initial response, ECF No. 69, was filed before an Order was entered advising him of his obligation in opposing a summary judgment motion under Rule 56. ECF No. 70. The Order pointed out that Plaintiff's initial response improperly combined argument within his statement of facts and did not clearly indicate the facts Plaintiff believed were supported by the evidence.

Thus, summary judgment is proper "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986). The "party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp., 477 U.S. at 323, 106 S. Ct. at 2553. The non-moving party must then show[2] though affidavits or other Rule 56 evidence "that there is a genuine issue for trial" or "an absence of evidence to support the nonmoving party's case." *Id.* at 325, 106 S. Ct. at 2554; Beard v. Banks, 548 U.S. 521, 529, 126 S. Ct. 2572, 2578, 165 L. Ed. 2d 697 (2006).

An issue of fact is "material" if it could affect the outcome of the case. Corp. v. Northern Crossarm Co., Inc., 357 F.3d 1256, 1259 (11th Cir. 2004) (citations omitted). Additionally, "the issue of fact must be

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[2] "Rule 56(e)…requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate specific facts showing that there is a genuine issue for trial.'" Owen v. Wille, 117 F.3d 1235, 1236 (11th Cir. 1997), *cert. denied* 522 U.S. 1126 (1998) (quoting Celotex, 477 U.S. at 324, 106 S. Ct. at 2553) (quoting Fed. R. Civ. P. 56(c), (e))). The nonmoving party need not produce evidence in a form that would be admissible as Rule 56(e) permits opposition to a summary judgment motion by any of the kinds of evidentiary materials listed in Rule 56(c). Owen, 117 F.3d at 1236; Celotex, 477 U.S. at 324, 106 S. Ct. at 2553.

'genuine'" and the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986) (other citations omitted). "The mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is material to an issue affecting the outcome of the case." McCormick v. City of Fort Lauderdale, 333 F.3d 1234, 1243 (11th Cir. 2003) (quoting Chapman v. Al Transp., 229 F.3d 1012, 1023 (11th Cir. 2000)).

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." Anderson, 477 U.S. at 249, 106 S. Ct. at 2511 (noting that a "scintilla of evidence" is not enough to refer the matter to a jury). The Court must decide "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Hickson Corp., 357 F.3d at 1260 (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 252, 106 S. Ct. 2505, 2505, 91 L. Ed. 2d 202 (1986)). All "justifiable inferences" must be resolved in the light most favorable to the nonmoving party, Beard, 548 U.S. at 529, 126 S. Ct. at 2578 (noting the distinction "between evidence of disputed facts and

disputed matters of professional judgment."),[3] but "only if there is a 'genuine' dispute as to those facts." Scott v. Harris, 550 U.S. 372, 380, 127 S. Ct. 1767, 167 L.Ed.2d 686 (2007) (quoted in Ricci v. DeStefano, 557 U.S. 557, 586, 129 S. Ct. 2658, 2677, 174 L. Ed. 2d 490 (2009)). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co., 475 U.S. at 587, 106 S. Ct. at 1356 (other citation omitted).

II. The Rule 56(e) Evidence[4]

Defendant Kriss was employed by the Florida Department of Corrections and assigned to Franklin Correctional Institution on March 16, 2013. Ex. A at 1 (ECF No. 68-1). On that day, Sergeant Kelley asked Defendant Kriss "to assist with inventorying" Plaintiff's property because he was being placed in confinement. *Id.* Defendant Kriss "inventoried his property and provided him with a bible as indicated on" the property sheet. *Id.* (citing to Ex. B (ECF No. 68-3).[5] Defendant Kriss declares that Plaintiff "signed

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[3] Noting that deference must be given "to the professional judgment of prison administrators," the Court stated that "[u]nless a prisoner can point to sufficient evidence regarding such issues of judgment to allow him to prevail on the merits, he cannot prevail at the summary judgment stage." Beard, 548 U.S. at 530, 126 S. Ct. at 2578 (citing Overton v. Bazzetta, 539 U.S. 126, 132, 123 S. Ct. 2162, 2167, 156 L. Ed. 2d 162 (2003)).

[4] For purposes of this summary judgment motion, Plaintiff states that he" "agrees" with, and "adopts," the factual allegations as stated by Defendant Kriss. ECF No. 71 at 2. Notwithstanding that assertion, it is apparent that Plaintiff seeks to clarify those factual allegations with his own evidence.

[5] Plaintiff presented Defendant's initial response to his first set of interrogatories in which Defendant Kriss said: "I do not recall if I inventoried inmate Hoever's property." ECF No. 71 at 17. An updated response was also provided, however, in which

for his property and did not tell [her] that he needed another bible." *Id.* at 2.

Exhibit B is the Inmate Impounded Personal Property List. ECF No. 68-2. It shows the property that Plaintiff was allowed to keep designated with "k." *Id.* Property placed in storage was designated with an "s." *Id.* Plaintiff was permitted to keep the following items: canteen, Ivory soap, soap dish, "Holy bible," glasses, 1 earphone, shower slides, deodorant, Colgate toothpaste, a toothbrush holder, and an address book. *Id.* Items placed in storage were: blue canteen bag, New Balance shoes, mirror, thermal top, bowl, raincoat, knee brace, 2 cups, 1 coffee cup, "combo lock," Colgate toothpaste, Chapstick, lotion, 5 shirts, 7 socks, 5 books, 21 photos, 1 photo album, legal mail, and personal mail. *Id.*

During Plaintiff's deposition, he stated that during his 26 days in confinement, he was able to pray but could not read the bible. Ex. C (ECF No. 68-3). He said he could "quote some verses [he] remembered and kind of prayed." *Id.* He could not do his daily devotionals until he got out of confinement. *Id.*

Plaintiff submitted his own affidavit in which he states that Defendant Kriss inventoried his property and wrote on the property slip that he was provided a Holy Bible. Plaintiff's Ex. PR.4 (ECF No. 71 at 35). Plaintiff said that what he was provided was a "Spanish Bible 'Santa Biblia.'" *Id.* Plaintiff says he "did not know Spanish well enough such that the Spanish Bible could function as an English Bible

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Defendant Kriss said that Sergeant Kelley was the Lead Sergeant and asked her to assist in inventorying Plaintiff's property. ECF No. 71 at 29. Defendant Kriss also indicated that Officer Serrato was involved in "doing the inventory." *Id.*

would" for him. *Id.* Plaintiff says he "told Officer Kriss about the discrepancy, and [he] told her that [he] needed one of the English Bibles (three (3)) [he] had in [his] property and [his] daily devotionals which were one 'Upper room' and one 'Faith-to-Faith.'" *Id.* Plaintiff said that Officer Kriss told him, "I'm not coming back! Sign here [and] let me go!" *Id.* Plaintiff said he was afraid that if he did not sign as directed, she would give him a disciplinary report for not following her order. *Id.* He says that he signed the property slip where she pointed for him to sign and Defendant Kriss walked away." *Id.*

Plaintiff said he filed a grievance about that incident at his "first possible chance" on March 19, 2013. ECF No. 71 at 35-36. Plaintiff said that reading his "daily devotional and the Bible texts that go along with that devotional is [his] spiritual food that" he practices daily. *Id.* at 36. He asserts that he is "obligated by [his] religion to do so on a daily basis." *Id.* He also states that not practicing his religion "and not reading [his] Bible and [his] daily devotionals imposes a substantial burden on [his] religious right." *Id.*

Defendant Kriss presented the copy of Plaintiff's grievances on this issue. Ex. D (ECF No. 68-4). Plaintiff submitted an informal grievance on March 19, 2013, and it was denied on March 22, 2013. *Id.* at 5. Plaintiff received that denial on March 23rd or 25th.[6] *Id.* Plaintiff submitted a formal grievance which was also denied. *Id.* at 3-4. He received that denial on April 24, 2013, and then filed an appeal to the Secretary on April 30, 2013. *Id.* at 2-3. His appeal was approved. *Id.* at 1. That approval came after Plaintiff was released

[6] The date stamp is not legible.

from confinement and had received his materials. ECF No. 71 at 36.

III. Analysis of First Amendment Claim

Plaintiff alleged his First Amendment rights were violated by Defendants Kriss because she did not provide Plaintiff with an English Bible and his devotional materials while he was in confinement. He brought this as a First Amendment claim and not under the Religious Land Use and Institutionalized Persons Act (RLUIPA). [7]

Defendant contends that Plaintiff was not substantially burdened but experienced only an inconsequential burden on his ability to practice his religion. ECF No. 68 at 6-11. Defendant argues that "[a]t most, Plaintiff was inconvenienced." *Id.* at 11. Defendant notes that "Plaintiff's materials were returned to him afer he was released from confinement in 26 days." *Id.* at 10. Defendant also argues that Plaintiff was not compelled "to engage in conduct that his religion forbids," and was "not pressured to modify his behavior or violate his beliefs." *Id.* Defendant points out that Plaintiff had alterative means to exercise his religious beliefs because he "was able to pray and he could recite bible verses while in confinement." *Id.* at 10-11. Finally, Defendant contends she is entitled to qualified immunity. *Id.* at 11-12.

The First Amendment,[8] made applicable to the

[7] To the degree Defendant Kriss argues "Plaintiff cannot establish a prima facie case under RLUIPA," ECF No. 68 at 6, that argument is not on point because Plaintiff did not bring his claim under RLUIPA but under the First Amendment.

[8] The First Amendment of the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

States through the Fourteenth Amendment, protects the free exercise of one's religion. See Cruz v. Beto, 405 U.S. 319, 92, S.Ct. 1079, 31 L.Ed.2d 263 (1972) (per curiam). "Despite their incarceration, inmates must be afforded a 'reasonable opportunity' to exercise their religious freedom." Cruz v. Beto, 405 U.S. 319, 322, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972) (cited in Clark v. Florida, No. 2:12-CV-461-FTM-29, 2012 WL 4513056, at *2 (M.D. Fla. Oct. 2, 2012). Inmates retain those First Amendment rights not incompatible with prison life. Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974); Bell v. Wolfish, 441 U.S. 520, 545, 99 S.Ct. 1861, 1877, 60 L.Ed.2d 447 (1979). Some rights must necessarily be limited by incarceration, Price v. Johnston, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060, 92 L.ed. 1356 (1948), but inmates "clearly retain protections afforded by the First Amendment, Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974), including its directive that no law shall prohibit the free exercise of religion." O'Lone v. Estate of Shabazz, 482 U.S. 342, 348, 107 S. Ct. 2400, 2404, 96 L. Ed. 2d 282 (1987) (citing Cruz v. Beto, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972) (per curiam)).

Recent cases have expressed that a violation of the right to the free exercise of religious beliefs exists if a plaintiff establishes "that a state actor imposed a 'substantial burden' on his practice of religion." Wilkinson v. GEO Grp., Inc., 617 F. App'x 915, 917 (11th Cir. 2015) (citing Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater, 2 F.3d 1514, 1549 (11th Cir. 1993)). The Eleventh Circuit concluded

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or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. Amend. I.

in Wilkinson that a plaintiff "must present evidence that he was coerced to perform conduct that his religion forbids or prevented from performing conduct that his religion requires." 617 F. App'x at 918. In doing so, the Court cited to Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004) (concluding that "a 'substantial burden' must place more than an inconvenience on religious exercise"); Cheffer v. Reno, 55 F.3d 1517, 1522 (11th Cir. 1995) (holding that the Access Act does not "substantially burden" appellants religious expression); and Holt v. Hobbs, 135 S. Ct. 853, 135 S.Ct. 853, 859-60, 190 L.Ed.2d 747 (2015) (concluding that the grooming policy prohibiting a 1/2-inch beard substantially burdened the prisoner's religious exercise). Wilkinson, 617 F. App'x at 918. As noted by the court, those cases were not First Amendment challenges brought under § 1983, but First Amendment claims brought under the Religious Land Use and Institutionalized Persons Act, (Midrash and Holt), and its "sister statute, and Religious Freedom Restoration Act" (Cheffer). 617 F. App'x at 918 (noting "the Acts were passed to reinstitute the standard of strict scrutiny in religious liberty cases"); *see also* Holt, 135 S. Ct. at 859. Those statutes were enacted "to provide very broad protection for religious liberty," Burwell v. Hobby Lobby Stores, Inc., 573 U.S. –, –, 134 S.Ct. 2751, 2760, 189 L.Ed.2d 675 (2014), and "provide greater protection for religious exercise than is available under the First Amendment." Holt, 135 S. Ct. at 859-60. Under that more liberal provision, a prisoner is still required to prove that he was "substantially burdened" in the exercise of his religious beliefs. *Id.* at 862; *see also* Allah v. Christburg, No. 2:12CV637-WHA, 2015 WL 5023125, at *6 (M.D. Ala. Aug. 18, 2015) (stating "[t]he burden must be substantial and

significantly interfere with an inmate's practice of his religious beliefs."); Dobbins v. Cummins, No. 2:08-CV-997-MEF, 2011 WL 2447722, at *6 (M.D. Ala. May 23, 2011) report and recommendation adopted, No. 2:08-CV-997-MEF, 2011 WL 2447713 (M.D. Ala. June 20, 2011) (citing Hernandez v. Commissioner, 490 U.S. 680, 699 (1989) and stating "[t]he burden must be substantial and significantly interfere with an inmate's practice of his religious beliefs.").

"[A] 'substantial burden' must place more than an inconvenience on religious exercise." Midrash, 366 F.3d at 1227 (quoted in Wilkinson, 617 F. App'x at 918). In Wilkinson, an inmate's "religious shrine" was destroyed during a search of his cell. *Id.* at 916. The inmate's grievance was granted, noting that it should not have been destroyed and the response to the grievance even "offered to reimburse Wilkinson for his loss so that he could replace the items." *Id.* The court concluded that "[a]t most, Wilkinson…established that he was temporarily deprived of a particular religious devotion." *Id.* at 918; *see also* Dobbins, 2011 WL 2447722, at *6 (finding that inmate failed to "demonstrate that his temporary inability to attend church services" for 12 days while in the prison's hospital ward did not "unduly burdened his ability to engage in the free exercise of his religion.").

Here, Plaintiff has presented evidence that he was denied his English version of the Bible and two devotional books for 26 days, although he had his own Spanish Bible and could pray. This denial of religious materials was of importance to Plaintiff, but the record demonstrates it was of a temporary nature. Such a denial of religious materials was an inconvenience to Plaintiff, but is has not been shown to have significantly burdened the exercise of his

religious beliefs. On these facts, the Court is unable to find that Plaintiff was substantially burdened. Accordingly, summary judgment should be granted in favor of Defendant Kriss.

RECOMMENDATION

It is respectfully **RECOMMENDED** that the motion for summary judgment, ECF No. 68, be GRANTED and judgment entered in favor of Defendant Kriss.

IN CHAMBERS at Tallahassee, Florida, on February 24, 2016.

S/ Charles A. Stampelos
CHARLES A. STAMPELOS
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 14 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 14 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

[filed October 23, 2014]

CONRAAD L HOEVER
Plaintiff

v. 4:13cv372-WS

P. BELLELIS, et al.,
Defendants.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation (doc. 45) docketed September 4, 2014. The magistrate judge recommends that the defendants' motion to dismiss be granted as to all claims except the plaintiff's First Amendment claims for free speech and free exercise of religion. The plaintiff has filed objections (doc. 48) to the report and recommendation.

Having reviewed the record in light of the plaintiff's objections, the court finds that the magistrate judge's report and recommendation should be adopted.

Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation (doc. 45) is ADOPTED and incorporated by reference into this order.
2. The defendants' motion to dismiss (doc. 35) the plaintiff's complaint is GRANTED as to all

claims except the plaintiff's First Amendment claims for free speech and free exercise of religion.

3. The plaintiff's request (doc. 1) for a preliminary injunction is DENIED.
4. The plaintiff's complaint (doc. 1) is DISMISSED in part. All of the plaintiff's claims are DISMISSED for failure to state a claim, *except* for the plaintiff's First Amendment free exercise and free speech claims. All of the defendants are DISMISSED *except* T. Kriss in her individual capacity only. The plaintiff's claim for damages against T. Kriss is limited to nominal damages.
5. The plaintiff shall have up to and including November 21, 2014, to submit an amended complaint if he is able to provide facts to support an access-to-courts claim.

DONE AND ORDERED this 23rd day of October, 2014

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES
DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

[filed September 4, 2014]

CONRAAD L. HOEVER,
Plaintiff,

vs. Case No. 4:13cv372-WS/CAS

P. BELLELIS, et al.,
Defendants.

REPORT AND RECOMMENDATION

The seven named Defendants[9] filed a motion to dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted pursuant to FED. R. CIV. P. 12(b)(6). Doc. 35. The pro se Plaintiff filed a motion to strike the Defendants' motion, doc. 37, pointing out that the motion to dismiss was not properly titled as such, *Id.* at 2-4, and exceeded the page limitations set by N.D. Fla. Loc. R. 7.1(A) without having been given leave to do so. *Id.* at 4-6. Plaintiff's motion was denied and he was directed to file a

[9] Although service was returned unexecuted as to Defendant K. Hampton, doc. 24, a notice of appearance was filed, doc. 27, and the motion to dismiss was filed thereafter. *See* 35. Subsequently, another unexecuted summons was filed for Defendant Hampton, doc. 39, and an Order was entered noting that no further action was required as Defendant Hampton has waived any arguments as to the sufficiency of service of process. Doc. 44.

response in opposition to the motion to dismiss. Doc. 38. Plaintiff's response, doc. 43, was timely filed and the motion to dismiss is ready for a ruling.

Standard of Review

The issue on whether a complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) for failing to state a claim upon which relief can be granted is whether the plaintiff has alleged enough plausible facts to support the claim stated. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (retiring the standard from Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). "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, 129 S.Ct. 1937, 1949, 173 L.Ed. 2d 868 (2009), *quoting* Twombly, 550 U.S. at 570, 127 S.Ct. 1955.[10] "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S.Ct. at 1949, *citing* Twombly, 550 at 556; *see also* Speaker v. U.S. Dept. of Health, 623 F.3d 1371, 1380 (11th Cir. 2010). "The plausibility standard" is not the same as a "probability requirement," and "asks for more than a sheer possibility that a defendant has acted unlawfully." Iqbal, 129 S.Ct. at 1949, *quoting*

[10] The complaint's allegations must be accepted as true when ruling on a motion to dismiss, Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 1586 (1993), and dismissal is not permissible because of "a judge's disbelief of a complaint's factual allegations." Twombly, 127 S.Ct. at 1965, *quoting* Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

Twombly, 550 at 556. A complaint that "pleads facts that are 'merely consistent with' a defendant's liability," falls "short of the line between possibility and plausibility." Iqbal, 129 S.Ct. at 1949, *quoting* Twombly, 550 at 557.

The pleading standard is not heightened, but flexible, in line with Rule 8's command to simply give fair notice to the defendant of the plaintiff's claim and the grounds upon which it rests. Swierkiewicz v. Sorema, 534 U.S. 506, 122 S.Ct. 992, 998, 152 L.Ed.2d 1 (2002) ("Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions."). Pro se complaints are held to less stringent standards than those drafted by an attorney. Wright v. Newsome, 795 F.2d 964, 967 (11th Cir. 1986), citing Haines v. Kerner, 404 U.S. 519, 520-521, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972). Nevertheless, a complaint must provide sufficient notice of the claim and the grounds upon which it rests so that a "largely groundless claim" does not proceed through discovery and "take up the time of a number of other people . . . ." Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 125 S.Ct. 1627, 161 L.Ed.2d 577 (2005), *quoted in* Twombly, 127 S.Ct. at 1966.

Allegations of the Complaint, doc. 1

Plaintiff alleged that while incarcerated at Franklin Correctional Institution, he went to sick call on March 14, 2013, to request "the annual renewal of his shaving pass." *Id.* at 5. Nurse Franklin told Plaintiff the new pass would be ready in a few days and took Plaintiff's old shaving pass, telling Plaintiff to have an officer call Medical if they inquired about the pass. She advised there was no procedure for a temporary pass. *Id.*

Two days later, Defendant Kriss told Plaintiff to return to the dorm and shave because Plaintiff did not have a shaving pass. *Id.* at 6. Plaintiff explained the situation and asked Defendant Kriss to call Medical. *Id.* Defendant Kriss refused and told Plaintiff he would not eat lunch. So Plaintiff returned to the dorm and explained the situation to Dormitory Sergeant Manateo. Sergeant Manateo verified the information and "told Defendant Kriss that he was going to send Plaintiff back" for lunch. Sergeant Manateo and Defendant Kriss conversed over the radio about Plaintiff being permitted to eat lunch, with Defendant Kriss saying Plaintiff should not be allowed to eat, but Defendant Manateo insisting that Plaintiff would be sent back to eat. *Id.*

However, as Plaintiff went to eat, he was met by Defendant Kriss who directed Plaintiff to follow her to the Supervisor, Defendant Kelley. *Id.* at 6. Plaintiff was given two choices, go shave in the dormitory or go to confinement. Plaintiff's attempt to explain the situation was unsuccessful and he returned to the dormitory. Again, Plaintiff explained to Sergeant Manateo what happened and asked if he could call Medical for him because he was hungry. Medical then advised Sergeant Manateo that Plaintiff's shaving pass was ready for pick-up and Sergeant Manateo called the center tower to report that Plaintiff was going to pick up his pass from Medical so he could eat.

Defendant Kriss intercepted Plaintiff at the center tower gate, told Plaintiff to wait there, and went to talk to Defendant Kelley. *Id.* at 6. Defendant Kelley came and yelled at Plaintiff, cursing at him, and accusing Plaintiff of playing one officer against another. *Id.* at 7. Plaintiff denied that he did so and said he had only done what the nurse directed him to

do. *Id.* Plaintiff said that he was hungry and was on his way to pick up his shaving pass so he could eat. *Id.* Defendant Kelley refused to allow Plaintiff to pick up his shaving pass and took Plaintiff to confinement on a disciplinary charge of disrespect. *Id.*

Defendant Messer, the Officer in Charge, approached Plaintiff and Defendant Kelley and asked if Plaintiff was "the one from Echo dorm." *Id.* at 7. When Defendant Kelley responded affirmatively, Defendant Messer said, "Lock him up!" *Id.* Plaintiff contends that Defendant Messer had been "following the two-way radio conversations and was aware of the situation that Plaintiff did not eat, and he failed to do anything to help Plaintiff . . . ." *Id.* at 8. Defendant Kelley escorted Plaintiff to pre-confinement medical testing, allegedly taunting Plaintiff and attempting to provoke him. *Id.* Plaintiff was placed in confinement and at some point later that day, the on-duty nurse delivered Plaintiff's shaving pass to him. *Id.*

On March 16, 2013, Defendants Kriss and Sorrento inventoried Plaintiff's property and placed it in storage. *Id.* at 8. Plaintiff states that he was given only a Spanish Bible, no other reading, writing, or other materials. *Id.* Plaintiff requested his legal materials for a pending Court deadline, but Defendant Kriss would not bring him anything. *Id.* at 8-9. Plaintiff also requested his personal mail so he could write his family and his daily devotionals and his English Bible, and Defendant Kriss refused to bring those items to Plaintiff as well. *Id.* Plaintiff also complained to Defendant Kriss "that there were many items missing on the inventory list" but she ordered Plaintiff to sign the list and she left. *Id.* at 9.

Plaintiff alleged that Defendant Hampton served him with the disciplinary report written by Defendant

Kelley. *Id.* at 9. Plaintiff requested two witnesses, Nurse Franklin and Sergeant Manateo, but Defendant Hampton refused to list them as witnesses because they were not present when Plaintiff spoke with Defendant Kelley and, from that conversation, was charged with disrespect. *Id.* Defendant Hampton "threatened Plaintiff and forced him to sign that he had no witnesses." *Id.* Plaintiff then told Defendant Hampton he "wanted to write a statement and included why he wanted them as witnesses." *Id.* "Again, Defendant Hampton told Plaintiff that he could not write a statement and forced Plaintiff to sign that he did not want to write a statement." Plaintiff signed the notice of disciplinary charge "under protest." *Id.*

Plaintiff contends that at the disciplinary hearing on March 26, 2013, he explained the situation to the DR team (Ms. Laughton and Defendant Messer). *Id.* at 9. The team advised Plaintiff he should have called the witnesses he desired and he should have refused to sign the disciplinary report. *Id.* at 9-10. Plaintiff contends he was found guilty because Plaintiff's story was not corroborated and he was sentenced to 20 days in disciplinary confinement. *Id.* at 10.

Defendant Hall allegedly denied Plaintiff's grievances, and Defendant Bellelis denied the grievance appeal. *Id.* at 10. Plaintiff contends that Defendant Hampton "has a custom of threatening inmates" and other wrongs, as does Defendant Kelley, including fabricating evidence against them to place them in confinement and "depriving inmates from eating." *Id.* at 10-11. Plaintiff claims that "Defendants Bellelis, Hall, and Messer are aware of these occurrences and illegal conducts [sic] by prison officials, and are doing nothing to stop them." *Id.* at 11.

Analysis of Motion to Dismiss, doc. 35

Defendants contend that Plaintiff's complaint should be dismissed for failing to state a claim upon which relief may be granted as to all claims raised against all Defendants. Doc. 35 at 1. The arguments are addressed belong, along with Plaintiff's responses.

1. Due Process claims

Defendants contend that all of Plaintiff's due process claims fail because Plaintiff does not "allege the deprivation of a constitutionally protected liberty or property interest which would give rise to the protections of the Due Process Clause." Doc. 35 at 9. Plaintiff alleged in the complaint that he was found guilty of the disciplinary charge and sentenced to 20 days in disciplinary confinement, but did not have gain time forfeited.

It is true that prisoners may "claim the protections of the Due Process Clause." Wolff v. McDonnell, 418 U.S. 539, 556, 94 S. Ct. 2963, 2974, 41 L. Ed. 2d 935 (1974). However, due process exists to protect a liberty interest. The law has been well established since Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 2300, 132 L. Ed. 2d 418 (1995), that "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law." Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 2301, 132 L. Ed. 2d 418 (1995). Since Sandin, there are only two instances where a prisoner can claim a protected liberty interest: (1) when the term of imprisonment is lengthened and (2) where restraint "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" such that there is a "major disruption in his environment." 115 S. Ct. at 2300-01.

Plaintiff did not have any gain time forfeited as a result of the disciplinary charge. He alleged only placement in disciplinary confinement, the loss of privileges, access to property and his family, and such things as the tainting of his disciplinary record which could effect eligibility for transfer or adjustments of status, and the loss of future gain time. *See* doc. 1 at 12-13. All of those losses come within the "expected parameters" of prison life and are not extraordinary, atypical, or significant deprivations, especially considering the confinement was for less than 30 days. The Eleventh Circuit has held that as much as two months in administrative confinement is, as a matter of law, insufficient to state a due process claim. Rodgers v. Singletary, 142 F.3d 1252, 1253 (11th Cir. 1998) (holding that inmate did not show that he "was deprived of a constitutionally protected liberty interest as defined in Sandin" where he did not lose gain time and was only held in confinement for two months), *citing* Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). While Plaintiff argues in response to the motion to dismiss that procedural due process gives him the right to call witnesses and make a statement in his own defense when facing a disciplinary charge, *see* doc. 43 at 4-7, Plaintiff's sentence of 20 days in disciplinary confinement is not a sufficient liberty interest to trigger the protections of the Due Process Clause.

Furthermore, to the degree Plaintiff's complaint may be fairly read to argue that Plaintiff also lost the right to earn future gain time as a result of the disciplinary report and time spent in confinement, that claim is not sufficient either. Courts have held that the "the mere opportunity or expectation to earn good-time credits" does not constitute "a constitutionally cognizable liberty interest sufficient

to trigger the protections of the Due Process Clause." *See* Hartley v. McNeil, Case No. 0722683-CIV, 2008 WL 3200213 at *4 (S.D. Fla. Aug. 6, 2008) (noting that inmates in disciplinary confinement status for less than 30 days are not eligible for incentive gain time for three months following the infraction). Courts have found that the potential loss of such future gain time is "too speculative to give rise to a liberty interest protected by due process." Hartley, 2008 WL 3200213 at *6, *citing* Venegas v. Henman, 126 F.3d 760, 765 (5th Cir. 1997), *cert. denied*, 523 U.S. 1108 (1998); Luken v. Scott, 71 F.3d 192, 193 (5th Cir. 1995), *cert. denied*, 517 U.S. 1196 (1996); ; *see also* Conlogue v. Shinbaum, 949 F.2d 378, 380 (11th Cir. 1991), *quoting* Thomas v. Sellers, 691 F.2d 487, 489 (11th Cir. 1982) (per curiam) (stating that "[w]hen [a] statute is framed in discretionary terms there is not a liberty interest created)." Those cases are correct in finding that Plaintiff may not claim a protected interest in the possibility of future gain time.

Plaintiff's claims of due process violations in his disciplinary proceedings are not sufficient to state a claim upon which relief could be granted. The motion to dismiss all of the due process claims should be granted.

2. First Amendment claims

Plaintiff alleged his First Amendment rights were violated by Defendants Kriss and Sorrento because those Defendants did not provide Plaintiff with his materials while he was in confinement. Doc. 1 at 12. Plaintiff could not "write his family, write the courts," practice his religion, and he claimed Defendants interfered with his rights to free speech and the free exercise of his religion. *Id.*

The First Amendment, made applicable to the States through the Fourteenth Amendment, protects the free exercise of one's religion. See Cruz v. Beto, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972) (per curiam). Inmates retain those First Amendment rights not incompatible with prison life. Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974); Bell v. Wolfish, 441 U.S. 520, 545, 99 S.Ct. 1861, 1877, 60 L.Ed.2d 447 (1979). Some rights must necessarily be limited by incarceration, Price v. Johnston, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948), but the First Amendment is not held captive behind prison walls.

The Turner standard of review utilized in O'Lone requires the Court to uphold prison regulations if they are "reasonably related to legitimate penological interests." O'Lone, 482 U.S. at 350, *using the standard of* Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987). Accordingly, "[a] prison regulation, even though it infringes the inmate's constitutional rights, is an actionable constitutional violation only if the regulation is unreasonable." Hakim v. Hicks, 223 F.3d 1244, 1247 (11th Cir. 2000), *cert. denied*, 532 U.S. 932 (2001) (holding that the Department of Corrections policy to not permit a "dual-name" on inmate identification card violated inmate's right to the free exercise of religion by denying him his Muslim identity and was unreasonable under Turner).

Here, Plaintiff has presented a plausible First Amendment claim for the denial of his religious materials. Plaintiff alleged that he specifically requested certain religious materials from his property and the request was denied although he was provided a Spanish Bible, a Bible which according to Plaintiff would not do him any good because he is not

fluent in Spanish. Doc. 1 at 8. Plaintiff has also shown that the rules permit inmates in confinement to possess religious items. Doc. 43 at 7. Indeed, the factual allegations of the complaint demonstrate that religious materials are permissible in confinement because a Spanish Bible was provided to Plaintiff. Plaintiff's request to be given one of his three English Bibles and his devotional materials was refused by Defendant Kriss. Those allegations are sufficient to state a claim that Plaintiff was prevented from the free exercise of his religious freedom, and it would be improper to dismiss such a claim at this stage of litigation. *See* Saleem v. Evans, 866 F.2d 1313, 1316 (11th Cir. 1989) (finding that "[t]o strike the proper balance between the competing interests of prison officials in secure and efficient administration, on the one hand, and of inmates in complying with the requirements of religious doctrine, on the other, the aid of a factual record is essential."), *citing* Shabazz v. Barnauskas, 598 F.2d 345, 347 (5th Cir. 1979) (noting that dismissal of a First Amendment claim should only be permitted "if it involves a religious claim so facially idiosyncratic that neither a hearing nor state justification of its regulation is required"). The motion to dismiss the First Amendment free exercise claim should be denied.

Plaintiff has also presented a First Amendment claim for the infringement on his right to freedom of speech. Doc. 1 at 12. Plaintiff alleged he requested "his personal mail so that he could write his family," but the request was denied by Defendant Kriss. *Id.* at 8. Plaintiff has shown that inmates in confinement are allowed "the same opportunities for correspondence that are available to the general inmate population." Doc. 43 at 7. The freedom asserted by Plaintiff is grounded both in freedom of speech and in freedom of

association. *See* Roberts v. U.S. Jaycees, 468 U.S. 609, 617–618, 104 S.Ct. 3244, 3249, 82 L.Ed.2d 462 (1984) (recognizing the right to associate for purposes of First Amendment activities such as freedom of speech and for "preserving other individual liberties ."). "Mail is one medium of free speech, and the right to send and receive mail exists under the First Amendment." Al-Amin v. Smith, 511 F.3d 1317, 1333 (11th Cir. 2008) (citations omitted) (holding that prison inmate "has a First Amendment free speech right to communicate with his attorneys by mail, separate and apart from [the] constitutional right to access to the courts."). Defendants acknowledge that "prisoners retain the right to send and receive mail under the free speech clause," *see* doc. 35 at 19, but do not present any argument as to why this distinct First Amendment claim is insufficient. Defendants do, however, point out that Plaintiff's complaint alleged that he requested the materials (both religious and correspondence) from Defendant Kriss. Doc. 35 at 25. Thus, the motion to dismiss the First Amendment free speech and free exercise claims should be granted as to Defendant Serrato, but otherwise denied.

Plaintiff claimed that his right to access the courts was denied when he was in disciplinary confinement and was not provided his legal materials. Doc. 1 at 8. Plaintiff told Defendant Kriss that he had a pending court deadline, but his request was denied. *Id.* Defendants contend this claim should be dismissed because Plaintiff has not shown "actual injury" in the "denial of dismissal of a direct appeal, habeas petition, or civil rights case that results from actions of prison officials." Doc. 35 at 26.

To present a First Amendment claim regarding the denial of access to the courts, an inmate must also

allege "actual injury." Lewis v. Casey, 518 U.S. 343, 352-54, 116 S. Ct. 2174, 2180-81, 135 L. Ed. 2d 606 (1996). That showing is made when the inmate alleges that a defendant frustrated or impeded the inmate's efforts to pursue a nonfrivolous legal claim, *Id.*, at 352-54, 116 S. Ct. at 2181, and the legal claim must be an appeal from a conviction for which the inmate was incarcerated, a habeas petition, or a civil rights action. Bass v. Singletary, 143 F.3d 1442, 1445 (11th Cir. 1998), *citing* Lewis, 518 U.S. at 352-57, 116 S. Ct. at 2181-82.

Here, it is unknown what case Plaintiff was litigating, whether or not he missed the deadline due to Defendants' actions, and whether he suffered any injury from the refusal of Defendants Kriss and Sorrento to provide Plaintiff with his legal materials. Although one deadline was missed, Plaintiff may not have been injured if a request for an enlargement of time was granted. As presented, Plaintiff's complaint does not provide enough facts to support this claim. Therefore, the First Amendment access to courts claim should be dismissed, but Plaintiff should be permitted an opportunity to submit an amended complaint if he is able to provide facts which would support this claim. To do so, Plaintiff must explain the underlying action (stating whether it challenged his sentence or challenged the conditions of confinement), show the claims raised were not frivolous, and Plaintiff must state how the Defendants' conduct impeded his ability to pursue the claims.

3. Eighth Amendment claim

Plaintiff alleged his Eighth Amendment rights were violated when Plaintiff was not permitted to eat lunch. Doc. 1 at 12. Defendants contend that Plaintiff has not shown a sufficiently serious deprivation and

the claim should be dismissed. Doc. 35 at 26-27.

"[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs--e.g., food, clothing, shelter, medical care, and reasonable safety--it transgresses the substantive limits on state action set by the Eighth Amendment. . . ." Helling v. McKinney, 509 U.S. 25, 31-32, 113 S. Ct. 2475, 2480, 125 L. Ed. 2d 22 (1993), *quoting* DeShaney v. Winnebago Cnty. Dept. of Soc. Services, 489 U.S. 189, 199-200, 109 S. Ct. 998, 1005-1006, 103 L. Ed. 2d 249 (1989). "To state an Eighth Amendment violation, a prisoner must allege facts to satisfy an objective and subjective inquiry regarding a prison official's conduct and demonstrate the constitutional violation caused his injuries." Shirley v. Sternal, Case No. 09-10045-Civ, 2010 WL 6020684 at * 6 (S.D. Fla. Aug. 30, 2010), *citing* Chandler v. Crosby, 379 F.3d 1278, 1289, 1291 n.21 (11th Cir. 2004); Marsh v. Butler Cnty., 268 F.3d 1014, 1028 (11th Cir. 2001). To meet the "objective" element, a prisoner must allege a condition that is sufficiently serious or extreme. Chandler, 379 F.3d at 1289; Taylor v. Adams, 221 F.3d 1254, 1258 (11th Cir. 2000). Plaintiff's claim here fails to meet the objective element. Missing one meal is not a sufficiently serious deprivation. *See* Adair v. Okaloosa Cnty. Jail, Case No. 3:07cv425-MCR/EMT, 2008 WL 564616 at *3 (N.D. Fla. Feb. 27, 2008) (holding that "[u]nder no set of facts can the denial of one meal constitute a significant deprivation). The motion to dismiss the Eighth Amendment claim should be granted and this claim dismissed.

4. Claims against Defendants Hall and Bellelis

Defendants contend that the claims against these

Defendants should be dismissed because denying a grievance is insufficient to establish supervisory liability. Doc. 35 at 27-28. Plaintiff's complaint does not set forth a claim against the Defendants under the Statement of Claims section of the complaint. Doc. 1 at 12-12. However, Plaintiff's factual allegations within the complaint assert that "Defendant Hall responded to Plaintiff's grievances, denied them and did nothing" to protect Plaintiff's rights. *Id.* at 10. Similarly, Plaintiff alleges that Defendant Bellelis "also denied the grievance . . . ." *Id.*

There is ample case law on this point to grant the motion to dismiss. "Isolated incidents are generally insufficient to establish a supervisor's liability, and filing a grievance with a supervisory person[11] does not alone make the supervisor liable for the allegedly violative conduct brought to light by the grievance, even if the grievance is denied." Owens v. Leavins, 5:05cv228, 2006 WL 2640275, at *4 (N.D. Fla. Sept. 13, 2006); Holmes v. Correction Corp. of America, 2011 WL 3490086, at *1 (S.D. Ga. Aug. 9, 2011); Tariq v. Chatman, 2012 WL 3626827, at *1 (M.D. Ga. Aug. 22, 2012). For supervisory liability to exist under § 1983, a plaintiff must allege either personal participation by the supervisor or "a causal connection existed between the actions of the supervising officials and the alleged constitutional deprivation." Hartley v. Parnell, 193 F.3d 1263, 1269 (11th Cir. 1999) (describing instances when a supervisor can be held liable under § 1983).

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[11] "It is well established in this circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates 'on the basis of respondeat superior or vicarious liability.'" Belcher v. City of Foley, 30 F.3d 1390, 1396 (11th Cir. 1994), *quoted in* Hartley v. Parnell, 193 F.3d 1263, 1269 (11th Cir. 1999).

Because Defendants Bellelis and Hall did not participate in the alleged Constitutional violations and there is no causal connection between them and the actions of the other Defendants, those Defendants cannot be liable for the denial of Plaintiff's grievances.

In response to the motion to dismiss, Plaintiff argues that these Defendants are liable because "they did nothing about" the actions of the other Defendants when Plaintiff grieved the fact that he was denied lunch, legal materials, religious materials, correspondence, and was unreasonably disciplined. Doc. 43 at 18-19. The law is clear that a prison official cannot be named as a Defendant in a civil rights case merely because he or she has supervisory authority over others. The doctrine of respondeat superior does not provide a basis for recovery under § l983. Harvey v. Harvey, 949 F.2d 1127, 1129 (11th Cir. 1992), *citing* Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). One cannot be held liable for the actions or omissions of others but can only be held responsible if he participated in the deprivation of a plaintiff's constitutional rights. Because Plaintiff did not assert a constitutional claim against these Defendants, and the factual allegations are insufficient to state a claim, the motion to dismiss, doc. 35, should be granted as to Defendants Bellelis and Hall.

5. Official Capacity claims

The claims remaining in this case are Plaintiff's First Amendment claims for the denial of religious materials and freedom of speech. Those claims are against Defendant Kriss only. Doc. 1 at 12. Defendants have raised Eleventh Amendment immunity as a defense to claims brought against them in their official capacities. Doc. 35 at 31. In response, Plaintiff asserts

that he does not "state, imply or suggest that he sued Defendants in their official capacity for monetary damages." Doc. 43 at 20. Accordingly, the motion to dismiss should be granted as to this issue and the claims proceed against Defendant Kriss in her individual capacity only.

6. Qualified Immunity

Defendants also assert qualified immunity as a defense, but provide no support for the argument as to the surviving First Amendment claims. Doc. 35 at 32-34. Nevertheless, well established law provides that inmates have "a First Amendment right to send and receive mail." Al-Amin, 511 F.3d at 1333. Inmates also have a First Amendment right of free exercise of religion. Cruz v. Beto, 405 U.S. 319, 322, 92 S.Ct. 1079, 1081-82, 31 L.Ed.2d 263 (1972) (*per curiam*). Those rights were clearly established at the time of the events at issue in this case. The motion to dismiss on the basis of qualified immunity should be denied.

7. Physical Injury

Defendants assert that because Plaintiff has not shown that he suffered physical injury as required by 42 U.S.C. § 1997e(e), he is not entitled to recover damages for emotional or mental injury. Doc. 35 at 34-35. Plaintiff contends that he meets the physical injury requirement because he developed severe sinus problems due to the use of chemical agents in confinement. Doc. 43 at 23, *citing* doc. 1 at 13.

It is well established that if there is no physical injury to Plaintiff as a result of the alleged First Amendment violation, Plaintiff's request for monetary damages must necessarily be limited to nominal damages as required by 42 U.S.C. § 1997e(e). Harris v.

Garner, 216 F.3d 970 (11th Cir. 2000)[12], *reinstating in part* 190 F.3d 1279 (11th Cir. 1999); Osterback v. Ingram, et al., No. 00-10558, 263 F.3d 169 (11th Cir. 2001) (Table). The PLRA precludes an award of compensatory and "punitive damages in the absence of physical injury." Al-Amin v. Smith, 637 F.3d 1192, 1199 (11th Cir. 2011). Even assuming that Plaintiff's First Amendment claims are related to the asserted harm to Plaintiff's sinuses, such harm is de minimis. The well established law in the Eleventh Circuit is that the physical injury "must be more than de minimis, but need not be significant." Harris, 190 F.3d at 1286. "[A]llowing prisoners to surmount this new statutory hurdle with purely trivial allegations of physical injury [makes] no sense in light of our basic understanding that 'routine discomfort is part of the penalty that criminal offenders pay for their offenses against society.'" Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992) (citation and internal quotation marks omitted), *quoted in* Harris, 190 F.3d at 1286. Plaintiff's claims must necessarily be limited to nominal damages and the motion to dismiss the compensatory and punitive damage claims should be granted.

8. Injunctive Relief

As relief, Plaintiff requested a "Preliminary and Permanent Injunction ordering the defendants to stop depriving inmates from the aforementioned constitutional rights." Doc. 1 at 13. Defendants contend this request should be denied. Doc. 35 at 36-

[12] Harris v. Garner, 190 F.3d 1279 (11th Cir. 1999) was vacated by 197 F.3d 1059, and the Opinion Reinstated in Part on Rehearing by 216 F.3d 970 (11th Cir. 2000), *cert. denied* 121 S. Ct. 2214 (2001). The parts of the panel opinion relevant to this legal issue were reinstated.

38.

Granting or denying a temporary restraining order or preliminary injunction rests in the discretion of the district court. Carillon Importers, Ltd. v. Frank Pesce Intern. Group Ltd., 112 F.3d 1125, 1126 (11th Cir. 1997), *citing* United States v. Lambert, 695 F.2d 536, 539 (11th Cir. 1983); Johnson v. Radford, 449 F.2d 115 (5th Cir. 1971). The district court must exercise its discretion in the light of whether:

1. There is a substantial likelihood that plaintiff will prevail on the merits;
2. There exists a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;
3. The threatened injury to plaintiff outweighs the threatened harm injunction will do to the defendant; and
4. The granting of the preliminary injunction will not disturb the public interest.

CBS Broadcasting, Inc. v. Echostar Communications Corp., 265 F.3d 1193, 1200 (11th Cir. 2001); Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000). "A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the burden of persuasion as to the four requisites." All Care Nursing Serv. v. Bethesda Mem'l Hosp., 887 F.2d 1535, 1537 (11th Cir. 1989) (quotations omitted). Here, there is no demonstration that Plaintiff will suffer irreparable injury if an injunction is not ordered. Thus, he has not shown all four requisites. As a request for a preliminary injunction, Plaintiff's request should be denied. If Plaintiff is entitled to injunctive relief from this lawsuit, such relief is appropriately granted at the conclusion of this litigation.

RECOMMENDATION

In light of the foregoing, it is respectfully **RECOMMENDED** that Defendants' motion to dismiss be **DENIED** as to Plaintiff's First Amendment claims for free speech and the free exercise of his religious faith, but otherwise **GRANTED**. Plaintiff's complaint, doc. 1, should be **DISMISSED** as to all Defendants except Kriss, in her individual capacity only and limited to nominal damages, and all claims should be **DISMISSED** for failure to state a claim upon which relief may be granted except the First Amendment free exercise and free speech claims, but Plaintiff should be permitted an opportunity to submit an amended complaint if he is able to provide facts which would support an access to courts claim. It is further **RECOMMENDED** that Plaintiff's request for a preliminary injunction be **DENIED**, and this case be **REMANDED** for further proceedings.

IN CHAMBERS at Tallahassee, Florida, on September 4, 2014.

S/ Charles A. Stampelos
CHARLES A. STAMPELOS
UNITED STATES
MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 14 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 14 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.

APPENDIX F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[filed October 5, 2015]

CONRAAD L HOEVER,
Plaintiff,

vs. Case No. 4:13-cv-372-WS-CAS

T KRISS,
Defendant

AMENDED MOTION AND MEMORANDUM OF LAW AS MOTION IN OPPOSITION OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

* * *

EXHIBIT PR. 4
GENERAL AFFIDAVIT

STATE OF FLORIDA

SS

COUNTY OF MADISON

I, Conraad Hoever DC#L85966, do hereby swear that the following statement is true and correct and made of my own free will, from my own personal knowledge:

1. T. Kriss had been a prison guard at Franklin Corr. Inst. in Carrabelle, Florida and inventoried my property on March 16, 2013.

2. Kriss wrote "Holy Bible" on the property slip, but instead gave me a Spanish Bible "Santa Biblia."
3. I did not know Spanish well enough such that the Spanish Bible could function as an English Bible would to me.
4. I told officer Kriss about the discrepancy, and I told her than I needed one of the English Bibles (three(3)) I had in my property and my Daily Devotionals which were one "Upper room," and one "Faith-to-Faith."
5. Officer Kriss said, "I'm not coming back! Sign here let me go!" I was afraid that if I did not sign, she could give me a disciplinary report (DR) for not following her verbal order to sign where she pointed that I should sign. I signed the property slip and Kriss walked away.
6. At my first possible chance, I filed a grievance on March 19, 2013, to address the issue to her superiors and explained all

Any additional facts maybe added on reverse side or extra paper if needed.

Under the penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true and correct in accordance with Section § 92.525 Florida Statutes (2006)

By: /s Conraad Hover
Affiant

that she withheld from me that included also all my legal and personal mail, of which I had also asked her.

7. Reading my daily devotional and the Bible texts that go along with that devotional is my spiritual food that I practice daily to avoid falling from the grace and mercy Jesus Christ bestowed upon me, and to make my day right. I am obligated by my religion to do so on a daily basis.
8. Not practicing my religion and not reading my Bible and my daily devotionals imposes a substantial burden on my religious right.
9. I compare the deviation of not reading and practicing my daily tasks/religion for 26 days an abomination and becoming a periah of the Christian faith and a complete dead/starvation of the soul.
10. I believe what Jesus Christ said in Luke 9:23 that "if any man will come after me, let him deny himself, and take up his cross daily, and follow me" that he meant that I have to exercise my daily devotionals. If I don't, I am unworthy of following him.

The above-mentioned facts are my personal experience and are true as stated. I am of competent age, over 18, competent to testify to these facts, will testify about these facts at trial if necessary, and do not suffer from any mental problem or memory loss.

/s Conraad Hover
Affiant
Address: Madison C-I
382 SW MCI Way
Madison, FL 32340

SWORN AND SUBSCRIBED BEFORE ME

This 30, day of September 2015
s/Heather Maurice
NOTARY PUBLIC

Personally known ___ or produced identification_____
Type of identification produced: Inmate ID

APPENDIX G

IN THE COURT OF UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

[filed December 19, 2014]

CONRAAD L HOEVER,
Inmate #L85966

vs. Case No. 4:13-cv-00372-WS-CAS

T. Kriss,
Correctional Officer
Fla. Dept. of Corr.

"AMENDED"

CIVIL RIGHTS COMPLAINT FORM TO BE USED BY PRISONERS IN ACTIONS UNDER 42 U.S.C. § 1983

* * *

V. STATEMENT OF FACTS:

State briefly the FACTS of this case. Describe how each Defendant was involved and what each person did or did not do which gives rise to your claim. In describing what happened, state the names of persons involved, dates, and places. Do not make any legal arguments or cite to any cases or statutes. You must set forth separate factual allegations in separately numbered paragraphs. You may make copies of this page if necessary to supply all facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. **(If there are**

facts which are not related to this same basic incident or issue, they must be addressed in a separate civil rights complaint.)

On March 16, 2013, Plaintiff was taken to confinement. Defendant Kriss inventoried Plaintiff's property and put all his religious materials, except for a Spanish Bible in storage. Plaintiff told the defendant that he needed his daily devotionals (Upperroom, Daily Bread, an Faith to Faith) and his English Bible to practice his religion. He told her that she wrote on the inventory list that she gave him "Santa Biblia," but that he does not know Spanish enough to read it and needed one of the three (3) English Bibles he had in his property. She told Plaintiff that she was not going to come back and would not bring him anything. Then she ordered Plaintiff to sign. Plaintiff signed and she left. Plaintiff made two more requests to other officers to no avail. Plaintiff spent twenty-six (26) days in confinement unable to practice his religion. The grievances his filed were denied at the institutional levels and approved by Central office after the damage was done and too late.

VI. STATEMENT OF CLAIMS:

State what rights under the Constitution, laws, or treaties of the United States you claim have been violated. Be specific. Number each separate claim and relate it to the facts alleged in Section V. **If claims are not related to the same basic incident or issue, they must be addressed in a separate civil rights complaint.**

Defendant's (Kriss') actions violated Plaintiff's rights of freedom to exercise his religion under the First Amendment of the United States Constitution.

VII. RELIEF REQUESTED:

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/statutes.

1) Decleration that the Defendant's actions violated Plaintiff's First Amendment rights, and (2) any and all other relief Plaintiff is entitled to, including, but not limited to the costs in this lawsuit, as this court deems proper and equitable.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS OF FACT, INCLUDING ALL CONTINUATION PAGES, ARE TRUE AND CORRECT.

12/16/2014 /s Conraad Hoever
(Date) (Signature of Plaintiff)

CERTIFICATE OF SERVICE
IF MAILED BY PRISONER:

I declare (or certify, verify, or affirm) under penalty of perjury that this complaint was (check one):
x delivered to prison officials for mailing or _ deposited in the prison's internal mail system on: the 16th day of December, 2014. And a copy furnished to office of the Attorney General, the Capitol, PL-01, Tallahassee, FL 32399-1050.

/s Conraad Hoever
(Signature of Plaintiff)

APPENDIX H

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[filed October 24, 2017]

No. 16-12108-BB

CONRAAD L HOEVER,

Plaintiff-Appellant,

versus

P. BELLEIS,
Chief of Security Colonel,
J HALL,
Deputy Chief of Security Major,
K. HAMPTON,
Group Supervisor Sergeant,
J KELLEY,
Group Supervisor,
T. KRISS,
Correction Officer,
W MESSER,
Officer in Charge Captain
J SERRATO,
Correction Officer,

Defendants-Appellees.

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

BEFORE: WILLIAM PRYOR, JORDAN and ROSENBAUM, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant Conraad Hoever is DENIED.

ENTERED FOR THE COURT:

/s William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE