

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BERNARD JERRY, :  
Plaintiff :  
v. : Case No. 3:08-cv-125-KRG-KAP  
JEFFREY BEARD, et al., :  
Defendants :

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on December 1, 2008, docket no. 28, recommending that defendants' motion to dismiss, docket no. 23 and docket no. 25, be granted and that the complaint be dismissed due to the Prison Litigation Reform Act's "three strikes" rule, 28 U.S.C. § 1915(g), because plaintiff has filed at least three actions dismissed for failure to state a claim. In the alternative, the Magistrate Judge recommended that the complaint be dismissed for failure to state a claim.

The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had ten days to serve and file written objections to the Report and Recommendation, and in plaintiff's case to pay the full filing fee. Plaintiff filed an objection to defendants' motion to supplement their motion to dismiss, docket no. 29, but has not filed objections to the Report and Recommendation or paid any part of the filing fee.

After review of the record together with the Report and Recommendation, and noting the lack of objections thereto, the following order is entered:

AND NOW, this 19<sup>th</sup> day of December, 2008, it is

ORDERED that plaintiff's complaint is dismissed without prejudice to reinstatement if plaintiff pays the full filing fee within thirty days. If plaintiff pays the filing fee, the complaint is dismissed for failure to state a claim. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink that reads "Kim R. Gibson". The signature is written in a cursive style with a horizontal line underneath the name.

KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and U.S. Mail to:

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