

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

2012 JUN 13 AM 11:49

DEPUTY CLERK EJB

JERRY LEMONS, PRO SE,
TDCJ-CID # 655319,
Previous TDCJ-CID # 566205,

Plaintiff,

v.

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE ID,
WILLARD KIPER,
SJIRLEY K. HARBOUR, and
MIKE RICHARDSON,

Defendants.

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2:09-CV-0102

ORDER OF DISMISSAL

Plaintiff JERRY LEMONS, acting pro se and while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants and was granted permission to proceed *in forma pauperis*.

On May 17, 2012, a Report and Recommendation was issued by the United States Magistrate Judge recommending the Civil Rights Claims by plaintiff JERRY LEMONS against defendant TEXAS DEPARTMENT OF CRIMINAL JUSTICE ID and against defendants KIPER, HARBOUR, and RICHARDSON IN THEIR OFFICIAL CAPACITIES be dismissed without prejudice pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure as barred by sovereign immunity; plaintiff's claim for monetary relief be dismissed pursuant to the PLRA for failure to state a claim on which relief can be granted and as frivolous under the RLUIPA;

plaintiff's First Amendment claims against defendant RICHARDSON be dismissed for failure to exhaust administrative remedies; plaintiff's claims against defendant RICHARDSON and defendant HARBOUR be dismissed with prejudice for failure to state a claim on which relief can be granted and because defendants RICHARDSON and HARBOUR are entitled to qualified immunity against the claims asserted; and plaintiff's claims against defendant KIPER be dismissed with prejudice because KIPER has shown he is entitled to qualified immunity from plaintiff's claims.

The period for response has expired, and no objections have been filed by plaintiff.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation. The Court is of the opinion that the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge in this case.

IT IS THEREFORE ORDERED that the Civil Rights Claims by plaintiff JERRY LEMONS against defendant TEXAS DEPARTMENT OF CRIMINAL JUSTICE ID and against defendants KIPER, HARBOUR, and RICHARDSON IN THEIR OFFICIAL CAPACITIES are DISMISSED WITHOUT PREJUDICE PURSUANT TO RULE 12(b)(1), FEDERAL RULES OF CIVIL PROCEDURE AS BARRED BY SOVEREIGN IMMUNITY; plaintiff's claim for monetary relief is DISMISSED PURSUANT TO THE PLRA FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED AND AS FRIVOLOUS UNDER THE RLUIPA; plaintiff's First Amendment claims against defendant RICHARDSON are

DISMISSED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES; plaintiff's claims against defendant RICHARDSON and defendant HARBOUR are dismissed WITH PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED AND BECAUSE DEFENDANTS RICHARDSON AND HARBOUR ARE ENTITLED TO QUALIFIED IMMUNITY against the claims asserted; and plaintiff's claims against defendant KIPER are DISMISSED WITH PREJUDICE because KIPER HAS SHOWN HE IS ENTITLED TO QUALIFIED IMMUNITY FROM PLAINTIFF'S CLAIMS.

LET JUDGMENT BE ENTERED ACCORDINGLY.

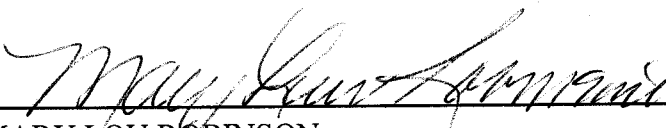
All pending motions are DENIED.

The Clerk shall send a copy of this Order to plaintiff and to any attorney of record.

The Clerk shall also provide a copy of this order by regular mail, facsimile transmission, or e-mail to: (1) the TDCJ—Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, Fax Number (512) 9362159; (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax: 936-437-4793; and (3) the District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Manager of the Three-Strikes List.

It is SO ORDERED.

Signed this the 13th day of June, 2012.



MARY LOU ROBINSON
United States District Judge