

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

DAMON JOHNSON,

Plaintiff,

v.

**Civil Action No. 1:03CV267
(Judge Broadwater)**

**WARDEN BLEDSOE;
MS. LIVINGSTON, Disciplinary Officer;
KIM WHITE, Regional Administrative
Remedy Adjudicator; and
HARVELL WATTS, General Counsel,**

Defendants.

REPORT AND RECOMMENDATION

On December 4, 2003, the plaintiff, Damon Johnson, filed a *pro se* complaint against the above-named defendants pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). In his complaint, he asserts that on September 20, 2003, he was placed in segregation for allegedly making a three way call which violates the institution's rules and regulations.

The plaintiff also filed an Application for Leave to Proceed Without Prepayment of Fees. By order entered on February 6, 2004, the Court granted the plaintiff' application for leave to proceed without prepayment of fees. The Court further ordered the plaintiff to pay the initial filing fee of \$40.94 within 30 days of the entry of the Order. On January 21, 2005, the plaintiff sent the Court a letter which has been deemed a Motion to Extend Time to Pay Filing Fee. In his motion, the plaintiff that because he was in disciplinary segregation for the year 2004 he was unable to obtain

the copies needed to forward to the Trustee Officer. He further indicated that he would like to proceed with this civil action if possible.

By Order entered on January 25, 2005, the Court granted the plaintiff's request for an extension. The plaintiff was further ordered to pay the initial filing fee within 15 days of the entry of the Order. He was warned that the failure to do so would result in the undersigned recommending that his case be dismissed. The plaintiff has not responded to the Court's January 25, 2005 Order. Consequently, it is recommended that the case be dismissed without prejudice.

Any party may file within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable W. Craig Broadwater, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. §636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff.

Dated: April 8, 2005

/s *John S. Kaul*

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE