

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

DELLWAYNE PRICE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 5:24-cv-366-CAR-AGH
	:	
McDANIEL, <i>et al.</i> ,	:	
	:	
Defendants	:	

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**ORDER AND RECOMMENDATION**

*Pro se* Plaintiff Dellwayne Price, a prisoner at Ware State Prison in Waycross, Georgia, filed a Recast Complaint. ECF Nos. 19-1, 19-2. Plaintiff also filed a motion requesting leave to file the recast complaint. ECF No. 19. Although this request for leave was unnecessary due to the Court’s order for Plaintiff to file a recast complaint (ECF No. 10), it is nonetheless **GRANTED**. Plaintiff’s motion for an extension of time to file his recast complaint (ECF No. 17) is also **GRANTED**. Plaintiff further filed motions for summary judgment (ECF No. 11), for appointment of counsel (ECF Nos. 13, 22, 24, 26), for “indigent non-legal supplies” from Ware State Prison (ECF No. 14), for increased access to the law library at Ware State Prison (ECF No. 15), and for increased postage limits from Ware State Prison (ECF No. 16). Plaintiff’s motions for appointed counsel (ECF Nos. 13, 22, 24, 26), for supplies (ECF Nos. 14, 16), and for law library access (ECF No. 15) are **DENIED** for the reasons set forth below. It is also **RECOMMENDED** that Plaintiff’s claims be **DISMISSED without prejudice** for failing to state a claim upon which relief may be granted and because

Plaintiff failed to exhaust his administrative remedies before filing this case. It is also **RECOMMENDED** that Plaintiff's request for summary judgment (ECF No. 11) be **DENIED**.

### MOTIONS FOR APPOINTED COUNSEL

In the Court's December 11 Order, Plaintiff's requests for an attorney were denied and Plaintiff was directed to "refrain from filing additional requests for counsel." ECF No. 10 at 4. Despite the Court's instruction, Plaintiff filed a third, fourth, fifth, and sixth request for appointed counsel. ECF Nos. 13, 22, 24, 26. There is "no absolute constitutional right to the appointment of counsel" in a § 1983 lawsuit. *Poole v. Lambert*, 819 F.2d 1025, 1028 (11th Cir. 1987). Appointment of counsel is "instead a privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner." *Id.* In determining whether a case presents extraordinary circumstances, the Court considers

(1) the type and complexity of the case; (2) whether the plaintiff is capable of adequately presenting his case; (3) whether the plaintiff is in a position to adequately investigate the case; (4) whether the evidence "will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination"; and (5) whether the appointment of counsel would be of service to the parties and the court "by sharpening the issues in the case, shaping the examination of witnesses, and thus shortening the trial and assisting in a just determination." The District Court may also inquire into whether the plaintiff has made any effort to secure private counsel.

*DeJesus v. Lewis*, 14 F.4th 1182, 1204-05 (11th Cir. 2021) (quoting *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982)).<sup>1</sup> Upon a review of the record in this

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<sup>1</sup> The federal *in forma pauperis* statute authorizes courts to "request an attorney to represent any

case, the Court notes that Plaintiff set forth the basic factual allegations underlying his claims and that the applicable legal doctrines are readily apparent. *See* ECF Nos. 1, 19. Plaintiff's motions for appointment of counsel (ECF Nos. 13, 22, 24, 26) are consequently **DENIED**. Should it later become apparent that legal assistance is required in order to avoid prejudice to Plaintiff's rights, the Court, on its own motion, will consider assisting him in securing legal counsel at that time. Plaintiff is instructed not to file additional and duplicative requests for counsel.

### **MOTIONS FOR SUPPLIES AND LIBRARY ACCESS**

The Court instructed Plaintiff in its December 11 Order that “this Court is not the proper venue for Plaintiff to raise claims about the conditions of his confinement in Ware State Prison[.]” ECF No. 10 at 5. The Court explained that “[i]f Plaintiff wishes to raise claims regarding his incarceration at Ware State Prison and any actions by prison personnel at Ware State Prison, then he should submit a complaint in the Southern District of Georgia where venue would be proper for such claims.” *Id.* Despite the Court's instruction, Plaintiff filed motions seeking increased access to indigent supplies, postage, and the prison law library at Ware State Prison. *See* ECF Nos. 14-16.

Plaintiff is again instructed that because Ware State Prison lies within the Southern District of Georgia, claims regarding the actions of prison personnel at Ware State Prison must be brought in the Southern District of Georgia. *See* 28 U.S.C.

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person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). The statute does not, however, provide any funding to pay attorneys for their representation or authorize courts to compel attorneys to represent an indigent party in a civil case. *See Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296 (1989).

§ 90(c)(4); 28 U.S.C. § 1391(b). To continue to bring such claims before this Court is not only frivolous but also vexatious because the Court previously instructed Plaintiff that the Court lacks venue over such claims.<sup>2</sup> Because venue for Plaintiff's claims and his requested relief is not proper in this Court, Plaintiff's motions for increased supplies, postage, and law library time at Ware State Prison (ECF Nos. 14, 15, 16) are **DENIED** as frivolous.

### MOTION FOR SUMMARY JUDGMENT

Plaintiff filed a motion for summary judgment. ECF No. 11. Much like Plaintiff's original complaint, his motion for summary judgment is often indecipherable and includes rewritten passages from the *Jailhouse Lawyers Handbook* (2021 13th Ed.) that are inapplicable to his civil action. Compare ECF No. 11 with pages 109-110 of the *Jailhouse Lawyers Handbook*.<sup>3</sup>

This Court previously denied Plaintiff's multiple other motions for judgment prior to frivolity review in this case as well as in other civil suits filed by the Plaintiff. See ECF No. 10 at 5-6 (listing cases). Therefore, Plaintiff is aware that Defendants are not served with his complaint or required to answer any of his claims prior to the Court's determination that service is warranted within the requirements of the

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<sup>2</sup> Moreover, although Plaintiff contends he has difficulty obtaining supplies, he filed over two hundred pages of handwritten documents in this case that have all been mailed to the Court with sufficient postage. He has rewritten passages verbatim in these documents from outside resources. See e.g., ECF Nos. 1, 11. He also filed a number of similar documents in another pending case in the Middle District of Georgia. See *Price v. Fuller*, No. 5:24-CV-383-MTT-ALS (M.D. Ga. Oct. 22, 2024). His course of conduct thus belies his contention that prison officials are not providing him with sufficient access to legal resources, paper, and postage.

<sup>3</sup> *The Jailhouse Lawyer's Handbook* is a legal guide published by a non-profit, the Center for Constitutional Rights, and can be found online at <https://www.jailhouselaw.org> (last visited, Apr. 8, 2025).

Prison Litigation Reform Act, 28 U.S.C. §§ 1915 & 1915A (hereinafter the “PLRA”).

Until a court determines that a defendant should be served with a prisoner complaint, that a defendant must submit an answer to the complaint, and that discovery should commence, requesting summary judgment is premature and frivolous. *See e.g., Schreane v. Middlebrooks*, 522 F. App’x 845, 848 (11th Cir. 2013) (holding that “nothing in the Federal Rules of Civil Procedure required the District Court to grant [plaintiff’s] production of evidence request prior to the court’s determination that his Initial Complaint or his Amended Complaint stated a claim for relief.”); *Smith v. Fla. Dep’t of Corr.*, 713 F.3d 1059, 1064 (11th Cir. 2013) (“Summary judgment is premature when a party is not provided a reasonable opportunity to discover information essential to his opposition.”); *Jones v. City of Columbus*, 120 F.3d 248, 253 (11th Cir. 1997) (citations omitted) (“The law in this circuit is clear: the party opposing a motion for summary judgment should be permitted an adequate opportunity to complete discovery prior to consideration of the motion”). Additionally, as explained below, Plaintiff has not stated a viable § 1983 claim and thus his complaint is subject to dismissal under § 1915A. It is consequently **RECOMMENDED** that Plaintiff’s motion for summary judgment (ECF No. 11) be **DENIED**.

## **PRELIMINARY SCREENING OF PLAINTIFF’S COMPLAINT**

### **I. Standard of Review**

The PLRA directs courts to conduct a preliminary screening of every complaint filed by a prisoner who seeks redress from a government entity, official, or employee.

28 U.S.C. § 1915A(a). Courts must also screen complaints filed by a plaintiff proceeding IFP. 28 U.S.C. § 1915(e). Both statutes apply in this case, and the standard of review is the same. “*Pro se* filings are generally held to a less stringent standard than those drafted by attorneys and are liberally construed.” *Carmichael v. United States*, 966 F.3d 1250, 1258 (11th Cir. 2020) (citation omitted). Still, the Court must dismiss a prisoner complaint if it “(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b); see also 28 U.S.C. § 1915(e).

A claim is frivolous if it “lacks an arguable basis either in law or in fact.” *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008) (citations omitted). On preliminary review, the Court may dismiss claims that are based on “indisputably meritless legal” theories and “claims whose factual contentions are clearly baseless.” *Id.* (citations omitted). A claim can be dismissed as malicious if it is knowingly duplicative or otherwise amounts to an abuse of the judicial process. *Daker v. Ward*, 999 F.3d 1300, 1308, 1310 (11th Cir. 2021) (affirming dismissal of duplicative complaint “in light of [prisoner’s] history as a prolific serial filer”).

A complaint fails to state a claim if it does not include “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Factual allegations [in a complaint] must be enough to raise a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 555 (citations

omitted). In other words, the complaint must allege enough facts “to raise a reasonable expectation that discovery will reveal evidence” supporting a claim. *Id.* at 556. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

To state a claim for relief under § 1983, a plaintiff must allege that (1) an act or omission deprived him of a right, privilege, or immunity secured by the Constitution or a statute of the United States; and (2) the act or omission was committed by a person acting under color of state law. *Hale v. Tallapoosa Cnty.*, 50 F.3d 1579, 1582 (11th Cir. 1995). If a litigant cannot satisfy these requirements or fails to provide factual allegations in support of his claim or claims, the complaint is subject to dismissal. *See, e.g., Bingham v. Thomas*, 654 F.3d 1171, 1176-77 (11th Cir. 2011) (affirming dismissal of certain claims at preliminary screening because prisoner failed to allege sufficient facts to show a violation of his rights), *abrogated on other grounds by Wade v. McDade*, 106 F.4th 1251, 1255 (11th Cir. 2024) (en banc).

## II. Plaintiff’s Factual Allegations

Plaintiff’s claims arise from his incarceration at Macon State Prison (“MSP”) in Oglethorpe, Georgia. ECF No. 19-2. According to the Recast Complaint,<sup>4</sup> which is

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<sup>4</sup> Plaintiff’s Recast Complaint totals 24 pages, well more than the ten-page limit allotted by the Court’s December 11, 2024 Order to Recast, which provided: “**THE COMPLAINT CANNOT BE LONGER THAN TEN (10) PAGES IN ITS ENTIRETY**”. ECF No. 10 at 11 (emphasis in original). Plaintiff was also instructed that he is to “completely answer each question presented in the Court’s standard § 1983 complaint form, and he is to submit his answers on the form as feasible.” *Id.* at 10. Despite the Court’s instructions, Plaintiff did not place his answers on the form and chose instead to put his answers into a long narrative form attachment. *See* ECF Nos. 19-1, 19-2. Plaintiff is an experienced litigant in this Court and understands that the failure to comply with the Court’s orders and instructions may result in penalties, including dismissal. *See* Fed. R. Civ. P. 41(b); *Price v. Williams*,

the operative pleading in this action, on November 21, 2022, Defendants Deputy Warden McDaniel, Captain Hudson, Unit Manager Knight, Lieutenant Hatcher, and Cert Team officers M. Williams, J. Williams, and Miller were conducting inspections “inside of J-1.” *Id.* at 3. Plaintiff wanted to get their attention to discuss a violation of the “Georgia Department of Corrections Standard Operating Procedures” as to his shower schedule while in administrative segregation, so he began yelling out of his tray flap. *Id.* Defendant M. Williams told Plaintiff that he/she did “not have nothing to do with that it’s inspection time Price can you please put your hand back in the flap.” *Id.* at 4, 5. Plaintiff refused, stating that he “can’t close the flap until McDaniel, Knight, or Hatcher come to talk to [him].” *Id.* at 5.

Plaintiff complains that Defendant J. Williams and Miller then threatened to plant a knife on him and “make him pay” for his grievances and lawsuits. ECF No. 19-2 at 5. Plaintiff states that Defendant M. Williams “took out his taser in being taser Price in his left hand that was already injured for several minute.” *Id.* at 6. Plaintiff avers that Defendant Hudson told him “that’s what you get for not doing what we say” and ordered that a camera be turned on and “get medical down here.” *Id.* Plaintiff states that he refused to come to the door when a nurse came to medically assess him because Defendant M. Williams was still present on J-1. *Id.*

Plaintiff thus contends Defendant M. Williams violated his constitutional

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Case No. 5:21-cv-00386-TES-MSH (M.D. Ga. Feb. 4, 2022) (dismissed for failure to obey a Court Order); *Price v. White*, Case No. 5:22-cv-00197-MTT-MSH (M.D. Ga. May 30, 2024) (motion to dismiss granted to Defendants for Plaintiff’s failure to obey a Court Order and to participate in discovery). The Court could therefore also recommend dismissal on grounds that Plaintiff failed to comply with the Court’s December 11 Order. Plaintiff is again reminded that the Court expects full and timely compliance with its orders and instructions, and the failure to comply may result in sanctions.



rights by using excessive force against him and that Defendants J. Williams, G. Miller, and Hudson violated his constitutional rights by “witnessing Defendant M. Williams illegal action failing to correct that misconduct and encouraging the continuation of the misconduct.” *Id.* Plaintiff also alleges Defendants McDaniel, Knight, and Hatcher violated his Eighth Amendments right by “deliberate indifference to Plaintiff basic human need such as hygiene.” *Id.* As a result of these alleged constitutional violations, Plaintiff seeks declaratory and injunctive relief and damages. *Id.* at 7.

### **III. Plaintiff’s Claims are Subject to Dismissal**

#### **A. Dismissal for Failure to State a Claim**

##### *1. Excessive Force and Failure to Intervene Claims*

“The Eighth Amendment ‘prohibits the unnecessary and wanton infliction of pain.’” *Moore v. Hunter*, 847 F. App’x 694, 697 (11th Cir. 2021) (quoting *Thomas v. Bryant*, 614 F.3d 1288, 1303 (11th Cir. 2010)). “In the prison context, an excessive force claim ‘requires a two-prong showing: an objective showing of a deprivation or injury that is sufficiently serious to constitute a denial of the minimal civilized measure of life’s necessities and a subjective showing that the official had a sufficiently culpable state of mind.’” *Id.* (quoting *Thomas*, 614 F.3d at 1304). The objective showing “is responsive to contemporary standards of decency,” and thus even “a de minimis use of force is cognizable under the Eighth Amendment if it is ‘repugnant to the conscience of mankind.’” *Id.* (first citing *Thomas*, 614 F.3d at 1304; then quoting *Wilkins v. Gaddy*, 559 U.S. 34, 37-38 (2010)). To show subjective intent,

the prisoner must allege that a prison official applied force to a prisoner “maliciously and sadistically to cause harm” rather than “in a good faith effort to maintain or restore discipline[.]” *Williams v. Radford*, 64 F.4th 1185, 1195 (11th Cir. 2023) (quoting *Wilkins*, 559 U.S. at 37). To determine whether force was applied maliciously or sadistically to cause harm, the court considers factors which include:

(1) the extent of injury; (2) the need for application of force; (3) the relationship between that need and the amount of force used; (4) any efforts made to temper the severity of a forceful response; and (5) the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of facts known to them.

*Williams*, 64 F.4th at 1196 (quoting *Campbell v. Sikes*, 169 F.3d 1353, 1375 (11th Cir. 1999)).

Courts must give a “wide range of deference to prison officials acting to preserve discipline and security, including when considering decisions made at the scene of a disturbance.” *Cockrell v. Sparks*, 510 F.3d 1307, 1311 (11th Cir. 2007) (internal quotation marks omitted). Prison officials are entitled to use some amount of force against an inmate who refuses to comply with their lawful orders. *See, e.g., Orange v. Prescott*, No. 22-10955, 2024 WL 1156573, at \*5 (11th Cir. Mar. 18, 2024) (identifying the purported need for some force “to enforce compliance with [officers’] directives.”); *Miles v. Jackson*, 757 F. App’x 828, 830 (11th Cir. 2018) (“The use of a takedown is not disproportionate to the need to control an inmate who has failed to obey a jailer’s orders.” (internal quotation marks omitted)); *Bennett v. Parker*, 898 F.2d 1530, 1533 (11th Cir. 1990) (“Prison guards may use force when necessary to restore order and need not wait until disturbances reach dangerous

proportions before responding.”), *abrogated on other grounds by Wilkins v. Gaddy*, 559 U.S. 34, 38-39 (2010). Prison officials simply “do not have the luxury or obligation to convince every inmate that their orders are reasonable and well-thought out.” *Danley v. Allen*, 540 F.3d 1298, 1307 (11th Cir. 2008) (holding initial use of pepper spray was not excessive force where inmate failed to obey jailer’s orders), *overruled in part on other grounds by Iqbal*, 556 U.S. 662.

Here, Plaintiff acknowledges that he was disrupting prison officials as they were conducting inspections in J-1 and that he refused Defendant M. Williams’ request to “please put your hand back in the flap.” ECF No. 19-2 at 5. Plaintiff states that Defendant M. Williams then administered one shock with the taser to his hand. *Id.* at 6. Plaintiff does not provide any other details or allege that he was harmed in any way. *Id.* Indeed, he refused to meet with a nurse who came to his cell immediately following being tased in the hand. *Id.*

Considering the two-prong test set forth in *Moore*, the single short application of a taser to Plaintiff’s hand does not appear to be “repugnant to the conscience of mankind.” 847 F. App’x at 697; *Thomas v. Demings*, No. CV 15-00291-CB-C, 2016 WL 3356791, at \*7 (S.D. Ala. May 2, 2016) (listing cases and determining that “the use of a Taser in drive-stun mode is generally held to be a preferred and lesser use of force than the potential escalation of physical force and brutality”), *report and recommendation adopted by* 2016 WL 3351033 (S.D. Ala. June 15, 2016); *Howell v. Houston Cnty.* No. 5:09-cv-402-CAR, 2011 WL 3813291, at \*20 (M.D. Ga. Aug. 26, 2011) (finding “the use of a taser was a reasonable means of attempting to enforce

compliance” by a disruptive pretrial detainee with a jailer’s order to change into jail regulation clothes). More importantly, Plaintiff failed to allege that Defendant M. Williams used the taser “maliciously and sadistically to cause harm” rather than “in a good faith effort to maintain or restore discipline[.]” *Williams*, 64 F.4th at 1195. Accordingly, Plaintiff’s excessive force claim is subject to dismissal. *See Bennett*, 898 F.2d at 1534 (holding that grabbing an inmate by the throat and pushing him against the bars of his cell during an inmate count was not disproportionate to the need to stop the inmate from shouting and demanding to be let out); *Brockington v. Stanco*, No. 5:14-cv-38-MTT, 2016 WL 4443204, at \*2-3 (M.D. Ga. May 25, 2016) (finding use of force “necessary due to [inmate’s] refusals to comply with [officer’s] orders” to “put his arm back in the cell” where inmate waived his arm through flap to catch officer’s attention), *recommendation adopted by* 2016 WL 4445475 (M.D. Ga. Aug. 19, 2016).

Plaintiff raises a claim that Defendants J. Williams, G. Miller, and Hudson failed to intervene when Defendant M. Williams used a taser on his hand. A prison official who does not actually participate in the use of excessive force can be held liable under § 1983 if he fails to intervene by taking reasonable steps to protect the victim of another officer’s use of excessive force. *Skrnich v. Thornton*, 280 F.3d 1295, 1302 (11th Cir. 2002), *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). But “an officer cannot be liable for failing to stop or intervene when there was no constitutional violation being committed.” *Sebastian v. Ortiz*, 918 F.3d 1301, 1312 (11th Cir. 2019). Here, Defendant M. Williams did not use excessive force against Plaintiff. Defendants J. Williams, G. Miller, and Hudson consequently could

not have violated Plaintiff's constitutional rights by failing to intervene and these claims should be dismissed.

Finally, Plaintiff fails to state an Eighth Amendment claim as to Defendants J. Williams and Miller's verbal threats to "make him pay" by planting a knife in his cell. ECF No. 19-2 at 5. An allegation of "verbal abuse alone is insufficient to state a constitutional claim." *Hernandez v. Fla. Dep't of Corr.*, 281 F. App'x 862, 866 (11th Cir. 2008); *see also Coleman v. McGhee*, No. 21-12557, 2022 WL 217578, at \*2 (11th Cir. Jan. 25, 2022) ("[A] plaintiff must present more than 'verbal taunts however distressing' to allege an Eighth Amendment violation." (quoting *Edwards v. Gilbert*, 867 F.2d 1271, 1273 n.1 (11th Cir. 1989))). In other words, harassing and otherwise intimidating conduct by a corrections officer is not independently actionable under § 1983. *See Edwards*, 867 F.2d at 1273 n.1; *Barney v. Pulsipher*, 143 F.3d 1299, 1311 n.11 (10th Cir. 1998). Here, Plaintiff alleges that Defendants J. Williams and Miller verbally threatened to plant a knife on him presumably so that he would somehow be disciplined. ECF No. 19-1 at 5. However, there is nothing within Plaintiff's complaint to show that this was anything more than a verbal taunt and idle threat.

For the reasons set forth above, Plaintiff's Eighth Amendment claims against Defendants M. Williams, J. Williams, Miller, and Hudson are subject to dismissal pursuant to 28 U.S.C. § 1915(e) and § 1915A for failure to state a claim.

## 2. *Conditions-of-Confinement Claims*

"[T]he Constitution does not mandate comfortable prisons.' If prison conditions are merely restrictive and even harsh, 'they are part of the penalty that

criminal offenders pay for their offenses against society.” *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 349, 347 (1981)). However, when a convicted prisoner’s conditions of confinement amount to cruel and unusual punishment, they violate the Eighth Amendment. *Rhodes*, 452 U.S. at 345-46. To state a conditions-of-confinement claim under the Eighth Amendment, a plaintiff must satisfy both an objective and subjective component. *Christmas v. Nabors*, 76 F.4th 1320, 1331 (11th Cir. 2023). For the objective component, an inmate must first allege that the deprivations he suffers are “‘sufficiently serious’ to constitute a denial of the ‘minimal civilized measure of life’s necessities.’” *Thomas*, 614 F.3d at 1304 (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). This standard is only met when the challenged condition “poses an unreasonable risk of serious damage to [the prisoner’s] future health or safety,” *Chandler*, 379 F.3d at 1289 (internal quotation marks omitted), or if “society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk.” *Helling v. McKinney*, 509 U.S. 25, 36 (1993). To meet the subjective standard in a prison conditions case, a plaintiff must show that the prison official acted with deliberate indifference to a serious risk of harm to the prisoner. *Thomas*, 614 F.3d at 1304; *Christmas*, 76 F.4th at 1331.

Plaintiff appears to claim that Defendants McDaniel, Knight, and Hatcher should be held liable under the Eighth Amendment for not following Department of Corrections’ procedural rules for showers for prisoners being held in administrative

segregation. ECF No. 19-2 at 5, 6. He claims they have been deliberately indifferent to his “basic human need such as hygiene.” *Id.* at 6. However, courts have repeatedly held that the occasional denial of showers and hygiene products is not a sufficiently serious deprivation for purposes of setting forth a constitutional claim. *See e.g., Ellis v. Pierce Cnty.*, 415 F. App’x 215, 218 (11th Cir. 2011) (concluding several two-week delays of shower access for an inmate over the course of 15-month confinement were not constitutional violations); *Robertson v. McCray*, No. 03-22823-CIV, 2006 WL 2882502, at \*7 (S.D. Fla. July 28, 2006) (citing *Harris v. Fleming*, 839 F.3d 1232, 1235 (7th Cir. 1988)) (“Courts, however, have held that brief deprivations relating to hygiene items do not offend the constitution.”); *Barnes v. Cnty. of Monroe*, 85 F. Supp. 3d 696, 738 (W.D.N.Y. 2015) (“To the extent Plaintiff alleges that his inability to shower over the course of four days constitutes a constitutional deprivation, his claim must fail. Even a two-week suspension of shower privileges does not constitute a denial of ‘basic hygienic needs.’” (quoting *McCoy v. Goord*, 255 F. Supp. 2d 233, 260 (S.D.N.Y. 2003))).

Moreover, while Plaintiff claims he did not take “a shower in weeks according to Georgia Department of Correction Standard Operating Procedures Administrative Segregation” and that the alleged deprivation caused him “pain, suffering, physical injury and emotional distress,” he does not describe these injuries or allege any other specific facts to support this general contention. ECF No. 19-2 at 5, 6. His failure to allege a particular harm or that he lacked any other means of washing himself or maintaining some level of hygiene weighs against a finding that the deprivation was

objectively serious. *See Bingham v. Taylor*, No. 5:15-cv-19-MTT-MSH, 2015 WL 3465984, at \*8 (M.D. Ga. June 1, 2015) (dismissing conditions-of-confinement claim where “[p]laintiff does not allege that he suffered any harm as a result of being denied shower access or that he was unable to maintain an adequate level of hygiene without shower privileges”); *Robertson v. McCray*, No. 03–22823–CIV, 2006 WL 2882502, at \*7 (S.D. Fla. July 28, 2006) (noting that courts have held that “a plaintiff’s showing of harm or injury was a necessary element” where longer deprivations related to hygiene were alleged); *Fortune v. Hamberger*, 379 F. App’x 116, 122 (3d Cir. 2010) (“Fortune complained of his inability to adequately shower and exercise for a period of fifteen days. Although it is not clear how many times Fortune believes that he should have been permitted to engage in those activities in addition to the time he was already given to do so, he does not allege that he suffered any harm as a result of the denial of additional showers and exercise.”); *Barndt v. Wenerowicz*, Civ. A. No. 15-2729, 2016 WL 6612441, at \*4 (E.D. Pa. Nov. 8, 2016) (denial of showers and out of cell exercise for twenty-eight days did not violate Eighth Amendment when plaintiff did not suffer ill effects and had access to running water in his cell), *aff’d*, 698 F. App’x 673 (3d Cir. 2017). Accordingly, because Plaintiff fails to allege that he had no other means of washing himself or that he suffered any specific illness or injury from being denied showers, he failed to state a conditions-of-confinement claim.

Finally, “[i]n a § 1983 action, a federal court considers whether a constitutional right has been infringed, not whether bureaucratic procedures have been violated.”



*Jones v. Schofield*, No. 1:08-cv-7-WLS, 2009 WL 902154, at 3 (M.D. Ga. Mar. 30, 2009) (quoting *Rineholtz. v. Campbell*, 64 F.Supp.2d 721, 731 (W.D. Tenn. 1999)). “Prison regulations were never intended to confer rights on inmates or serve as a basis for constitutional claims.” *Id.* (quotation marks omitted). “Instead, state prison regulations, as well as the Unified Code of Corrections, were designed to provide guidance to prison officials in the administration of prisons.” *Id.* (quotation marks omitted). “Prison regulations and Standard Operating Procedures do not confer federal rights to prisoners that may be enforced or redressed in a § 1983 action.” *Id.*; see also *Sandin v. Conner*, 515 U.S. 472, 481-82 (1995) (noting that many prison regulations are “primarily designed to guide correctional officers in the administration of a prison” and that “such regulations are not designed to confer rights on inmates”). Therefore, Plaintiff fails to state a constitutional violation based solely upon the Defendant’s failure to follow prison policies or rules.

For the reasons set forth, Plaintiff’s conditions of confinement claims against Defendants McDaniel, Knight, and Hatcher fail to state claims upon which relief may be granted and are therefore subject to dismissal.

B. Dismissal for Failure to Exhaust

Alternatively, this action should also be dismissed because it is clear from the face of Plaintiff’s Complaint that he failed to exhaust his administrative remedies. The PLRA states that “[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). Thus, “when a state provides a grievance procedure for its prisoners, as Georgia does here, an inmate alleging harm suffered from prison conditions must file a grievance and exhaust the remedies available under that procedure before pursuing a § 1983 lawsuit.” *Brown v. Sikes*, 212 F.3d 1205, 1207 (11th Cir. 2000); *see also Woodford v. Ngo*, 548 U.S. 81, 95 (2006) (holding that “[t]he benefits of exhaustion can be realized only if the prison grievance system is given a fair opportunity to consider the grievance”). “[T]o properly exhaust administrative remedies prisoners must complete the administrative review process in accordance with the applicable procedural rules—rules that are defined not by the PLRA, but by the grievance process itself.” *Jones v. Bock*, 549 U.S. 199, 218 (2007) (internal quotation marks and citation omitted). The exhaustion of available administrative remedies is a mandatory requirement and cannot be waived even when the grievance process is futile or inadequate. *See Porter v. Nussle*, 534 U.S. 516, 524 (2002). Although failure to exhaust is an affirmative defense, dismissal of a complaint is warranted under the screening process set out in 28 U.S.C. § 1915A when it appears clear “on the face of the complaint” that the plaintiff failed to exhaust all available administrative remedies prior to filing suit in federal court and thereby cannot state a claim for relief. *Bingham*, 654 F.3d at 1175.

It is clear from the face of Plaintiff’s Recast Complaint that he failed to properly exhaust his administrative remedies. On the Court’s standard form, Plaintiff marked “Yes” when asked if he “present[ed his] complaint(s) herein to the institution as a grievance.” ECF No. 19-1 at 9. He also stated that his grievance was “rejected.” *Id.*

Plaintiff refers the Court to his previously filed attachment from his original complaint. *Id.* A review of Plaintiff's rejected grievance reveals that Plaintiff failed to follow proper procedure in the filing of his grievance by exceeding the set page limit and for writing on the backside of a page. ECF Nos. 1-2, 1-3, and 1-4 at 1. Furthermore, the grievance response clearly indicates that Plaintiff was advised of his right to appeal the rejection of his grievance. ECF No. 1-2. However, in his recast complaint, Plaintiff has checked "No" in response to the question, "Did you appeal any denial of your grievance to the highest level possible in the prison system?" ECF No. 19-1 at 11. Plaintiff attempts to justify his failure to appeal his grievance by stating that rather than rejecting his grievance, prison personnel should have forwarded his grievance to the Investigation Division of the Office of Professional Conduct. *Id.* at 10.

"The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." *Bock*, 549 U.S. at 218. "Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." *Woodford*, 548 U.S. at 90-91. All Georgia Department of Corrections prisons utilize a "Statewide Grievance Procedure" which became effective on May 10, 2019 and consists of two steps: the "Original Grievance" and the "Central Office Appeal." Georgia Department of Corrections Policy 227.02, Statewide Grievance

Procedure at ¶ IV.C., <https://gdc.georgia.gov/organization/about-gdc/agency-activity/policies-and-procedures/227-policy-facilities-conditions> (last visited Mar. 7, 2025).<sup>5</sup> Plaintiff could have appealed the denial of his grievance and could have even possibly raised his argument that, rather than being denied on procedural grounds, his grievance should have been referred to the Investigation Division. But Plaintiff did not appeal the denial of his grievance.

Plaintiff is unquestionably aware of the requirement to appeal the denial of his grievance before filing a § 1983 complaint because at least three of his most recent cases were dismissed for this exact reason. *See, e.g., Price v. Dugger*, ECF No. 19 in Case No. 5:22-cv-00299-MTT-TQL (M.D. Ga. May 30, 2023) (adopting recommendation to dismiss for failure to exhaust because Plaintiff failed to appeal denial of grievance); *Price v. Knight*, ECF No. 32 in Case No. 5:22-cv-00399-TES-CHW (M.D. Ga. Nov. 9, 2023) (recommending dismissal for failure to exhaust where Plaintiff “did not appeal the rejection of [applicable grievance] at all, much less before commencing suit”) *adopted by Price v. Knight*, ECF No. 33 in Case No. 5:22-cv-00399-TES-CHW (M.D. Ga. Nov. 30, 2023); *Price v. Collier*, ECF No. 38 in Case No. 5:23-cv-

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<sup>5</sup> Federal Rule of Evidence 201(b) allows a court to take judicial notice of “a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” “If the court takes judicial notice before notifying a party,” however, “the party, on request, is . . . entitled to be heard” regarding “the propriety of taking judicial notice and the nature of the fact to be noticed.” Fed. R. Evid. 201(e). Courts have taken judicial notice of facts located on the websites of government agencies. *See, e.g., Ga. Ass’n of Latino Elected Officials, Inc. v. Gwinnett Cnty. Bd. of Registrars*, 36 F.4th 1100, 1123 (11th Cir. 2022) (taking judicial notice of the fact that county’s website offered voters “fifteen languages other than English in which to view its website”); *Arizona Libertarian Party v. Reagan*, 798 F.3d 723, 727 n.3 (9th Cir. 2015) (holding that court may take judicial notice of official information posted on government website where accuracy of such information is undisputed); *Peruta v. Cnty. of San Diego*, 678 F. Supp. 2d 1046, 1053-54 (S.D. Cal. 2010) (finding that “the Court can properly take judicial notice of the documents appearing on a governmental website”).

00009-MTT-CHW (M.D. Ga. Dec. 15, 2023) (adopting recommendation to dismiss for failure to exhaust where Plaintiff did not show that he properly appealed his grievance). Despite this notice, Plaintiff once again filed a § 1983 complaint without fully exhausting his administrative remedies by appealing the denial of relief through all levels of review. Plaintiff's present civil action is therefore subject to dismissal for failure to exhaust. *Anderson v. Donald*, 261 F. App'x 254, 256 (11th Cir. 2008) (affirming *sua sponte* dismissal for failure to exhaust where Georgia inmate failed to appeal grievable claims after presenting them to the appropriate party).

### CONCLUSION

Based on the foregoing, Plaintiff's motion for an extension of time to file his recast complaint (ECF No. 17) and motion for leave to amend his complaint (ECF No. 19) are **GRANTED**. Plaintiff's repeated motions for appointment of counsel (ECF No. 13, 22, 24, 26), request for "indigent non-legal supplies" from Ware State Prison (ECF No. 14), request for increased access to the law library at Ware State Prison (ECF No. 15), and request for increased postage limits from Ware State Prison (ECF No. 16) are **DENIED**. It is **RECOMMENDED** that Plaintiff's claims be **DISMISSED without prejudice** for failing to state a claim upon which relief may be granted and/or for failure to exhaust his administrative remedies. It is also **RECOMMENDED** that Plaintiff's request for summary judgment (ECF No. 11) be **DENIED**.

### OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written

objections to these recommendations with the Honorable C. Ashley Royal, United States District Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Recommendation. Any objection is limited in length to **TWENTY (20) PAGES**. See M.D. Ga. L.R. 7.4. The parties may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. See 11th Cir. R. 3-1.

**SO ORDERED AND RECOMMENDED** this 12th day of May, 2025.

*s/ Amelia G. Helmick*

UNITED STATES MAGISTRATE JUDGE