

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

KENNETH CARDWELL,

Plaintiff

v.

1:06-cv-58 (WLS)

FREDERICK GAMMON, et al.,

Defendants

**ORDER**

Before the Court is a Recommendation from United States Magistrate Richard L. Hodge filed on January 23, 2008. (Doc. 68). It is recommended that Defendants’ Motion for Summary Judgment (Doc. 46) be granted. (Doc. 68). Plaintiff filed a timely objection to the Report and Recommendation on February 7, 2008. (Doc. 70).

In the Recommendation, it was found that Plaintiff failed to exhaust the administrative remedies available as required under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). (Doc. 68). Defendants presented affirmative evidence that Plaintiff had not filed a grievance related to the issues of this case. *Id.* Plaintiff failed, as required under Fed. R. Civ. Pro. 56(e), to submit any evidence to show that this issue is genuinely in dispute. (*See* Doc. 68). Magistrate Judge Hodge noted that Plaintiff failed to submit a copy of the grievance, or an affidavit stating that the same was submitted, with his response to Defendants’ Motion for Summary Judgment. *Id.*

In his objection, Plaintiff lists a litany of facts he believes to be related to his case. (Doc. 70). Plaintiff discusses, at length, the alleged use of a video camera during the incidents that are at issue in this case. *Id.* Essentially, Plaintiff contends that there has been a “cover-up” to prevent discovery of what really occurred in this case. *Id.* Plaintiff does explain that he was not able to make a copy of his grievance form and Defendants refused to produce a copy of the form which he alleges exists. *Id.* Unfortunately, Plaintiff misses the point. As noted by Judge Hodge, Plaintiff failed to provide affirmative evidence to show that such a grievance was actually filed. (Doc. 68). This is required in this case because Defendants submitted an affidavit alleging that a

grievance was never filed by Plaintiff. *See* Fed. R. Civ. Pro. 56(e).

Therefore, upon full review and consideration upon the record, the Court finds that said Report and Recommendation (Doc. 68) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made, reasons stated and conclusions reached herein. Accordingly, Defendant's Motion for Summary Judgment (Doc. 46) is **GRANTED**.

**SO ORDERED**, this 14<sup>th</sup> day of March, 2008.

/s/W. Louis Sands  
**THE HONORABLE W. LOUIS SANDS,**  
**UNITED STATES DISTRICT COURT**