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FILED: November 25, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1020
(4:17-cv-00134-RGD-DEM)

LAWRENCE ELIOT MATTISON

Plaintiff - Appellant

v.

JANIE DEBORAH WILLIS; SHERRY ANN ZAMORA; TIMOTHY MARTIN O'BOYLE; ADRIANE RACHELLE MAUNNEY; EMILY SUZANNE HUNT; TONYA R. HENDERSON-STITH; BONNIE LOUISE JONES; BARBARA TIMMENNEY HANNA

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Wynn, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

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UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT****No. 19-1020**

LAWRENCE ELIOT MATTISON,

Plaintiff - Appellant,

v.

JANIE DEBORAH WILLIS; SHERRY ANN ZAMORA; TIMOTHY MARTIN O'BOYLE; ADRIANE RACHELLE MAUNEY; EMILY SUZANNE HUNT; TONYA R. HENDERSON-STITH; BONNIE LOUISE JONES; BARBARA TIMMENEY HANNA,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Robert G. Doumar, Senior District Judge. (4:17-cv-00134-RGD-DEM)

Submitted: July 30, 2019

Decided: August 13, 2019

Before WILKINSON, WYNN, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Lawrence Eliot Mattison, Appellant Pro Se. Sean Douglas Jansen, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia; Madeline Markelz Gibson, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia; Michael Gordon Matheson, THOMPSON MCMULLAN, PC, Richmond, Virginia; Benjamin M. Mason, MASON,

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MASON, WALKER & HEDRICK, PC, Newport News, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Lawrence Eliot Mattison appeals the district court's order denying relief on his complaint alleging claims under 42 U.S.C. §§ 1983, 1985, and 1986 (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Mattison v. Willis*, No. 4:17-cv-00134-RGD-DEM (E.D. Va. Dec. 6, 2018). We grant Mattison's motion to file a surreply brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

LAWRENCE ELIOT MATTISON,

FILED
DEC - 6 2018
CLERK, US DISTRICT COURT NORFOLK, VA

Plaintiff,

v.

ACTION NO. 4:17cv134

JANIE DEBORAH WILLIS, *et al.*,

Defendants.

DISMISSAL ORDER

Plaintiff Lawrence Eliot Mattison (“Plaintiff”), appearing *pro se*, filed suit against Defendants Janie Deborah Willis (“Detective Willis”), Sherry Ann Zamora (“Judge Zamora”), Timothy Martin O’Boyle (“Mr. O’Boyle”), Adriane Rachelle Mauney (“Ms. Mauney”), Emily Suzanne Hunt (“Ms. Hunt”), Tonya Henderson-Stith (“Judge Henderson-Stith”), Bonnie Louise Jones (“Judge Jones”), and Barbara Timmeney Hanna (“Ms. Hanna”) (collectively “Defendants”). Am. Compl., ECF No. 63. This matter is before the Court on the following motions:

- (i) Ms. Hunt and Ms. Mauney’s “Omnibus Rule 12 Motion to Dismiss” (“Ms. Hunt & Ms. Mauney’s Motion to Dismiss”), ECF No. 64;
- (ii) Judge Zamora’s “Motion to Dismiss Amended Complaint” (“Judge Zamora’s Motion to Dismiss”), ECF No. 66;
- (iii) Mr. O’Boyle’s “Motion to Dismiss Amended Complaint” (“Mr. O’Boyle’s Motion to Dismiss”), ECF No. 69;
- (iv) Detective Willis’s “Motion to Dismiss Plaintiff’s Amended Complaint” (“Detective Willis’s Motion to Dismiss”), ECF No. 72;
- (v) Judge Jones’s “Motion to Dismiss Amended Complaint” (“Judge Jones’s Motion to Dismiss”), ECF No. 75;

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- (vi) Judge Henderson-Stith's "Motion to Dismiss Amended Complaint" ("Judge Henderson-Stith's Motion to Dismiss"), ECF No. 77;
- (vii) Plaintiff's request for Ms. Hanna's waiver of service form ("Plaintiff's Request for Waiver Form"), ECF No. 79;
- (viii) Ms. Hanna's "Motion to Dismiss Under Omnibus Rule 12 of the Federal Rules of Civil Procedure" ("Ms. Hanna's First Motion to Dismiss"), ECF No. 95; and
- (ix) Ms. Hanna's "Amended Motion to Dismiss Under Omnibus Rule 12 of the Federal Rules of Civil Procedure" ("Ms. Hanna's Amended Motion to Dismiss"), ECF No. 97.

The Court concludes that oral argument is unnecessary because the facts and legal arguments are adequately presented in the parties' briefs. For the reasons set forth below, Ms. Hunt & Ms. Mauney's Motion to Dismiss, ECF No. 64, is **GRANTED**; Judge Zamora's Motion to Dismiss, ECF No. 66, is **GRANTED**; Mr. O'Boyle's Motion to Dismiss, ECF No. 69, is **GRANTED**; Detective Willis's Motion to Dismiss, ECF No. 72, is **GRANTED**; Judge Jones's Motion to Dismiss, ECF No. 75, is **GRANTED**; Judge Henderson-Stith's Motion to Dismiss, ECF No. 77, is **GRANTED**; Plaintiff's Request for Waiver Form, ECF No. 79, is **DISMISSED as moot**; Ms. Hanna's First Motion to Dismiss, ECF No. 95, is **DISMISSED as moot**; and Ms. Hanna's Amended Motion to Dismiss, ECF No. 97, is **GRANTED**.

I. Factual and Procedural Background

Plaintiff formerly worked "as a Housekeeping Supervisor with the Department of Veterans Affairs at the Hampton Veteran Medical Center (HVAMC)," located at 100 Emancipation Drive, Hampton, Virginia 23667. Am. Compl. at 16, ECF No. 63. In March of 2015, Detective Willis, a "police detective with the Department of Veterans Affairs," provided sworn statements to a magistrate at the Hampton General District Court that accused Plaintiff of violating Virginia criminal laws regarding stalking, making annoying phone calls, and violating a

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protective order.¹ *Id.* at 2, 7, 17, Exs. 1-1, 1-2, 1-3, 1-4. Plaintiff's alleged criminal misconduct occurred on HVAMC property. *Id.* at 5, 17. According to the state court records, the magistrate issued an arrest warrant on March 25, 2015, after determining, based on the sworn statements of Detective Willis, that probable cause existed to believe that Plaintiff committed the offenses charged. *Id.*, Exs. 1-1, 1-3. On June 23, 2015, Plaintiff was arrested by an officer of the Hampton Police Department. *Id.* Following a trial in the Hampton General District Court on December 15, 2015, before Judge Henderson-Stith, during which Ms. Hanna served as Plaintiff's defense attorney and Ms. Mauney served as the Commonwealth's Attorney, Plaintiff was found guilty of the stalking and making annoying phone calls charges, and sentenced to twelve months in jail, with four months suspended. *Id.* at 2, 8, Exs. 1-1, 1-2, 1-3, 1-4. Plaintiff appealed his conviction to the Hampton Circuit Court. Following a trial in the Hampton Circuit Court on May 25, 2016, before Judge Jones, during which Ms. Hunt served as the Commonwealth's Attorney, Plaintiff was again found guilty of the stalking and making annoying phone calls charges, and sentenced to twelve months in jail, with credit for time served. *Id.*, Exs. 2-1, 2-2. Plaintiff appealed his Hampton Circuit Court conviction to the Virginia Court of Appeals; however, his appeal was denied. *See Commonwealth v. Mattison*, No. 0986-16-1 (Va. Ct. App. Apr. 17, 2017) (initial denial); *see also Commonwealth v. Mattison*, No. 0986-16-1 (Va.

¹ On page 17 of his Amended Complaint, Plaintiff states that Detective Willis "went to a City of Hampton Virginia magistrate" on December 25, 2015. Am. Compl. at 17, ECF No. 63. However, Plaintiff attached state court records to his Amended Complaint that indicate that the magistrate issued an arrest warrant on March 25, 2015, based on the sworn statements of Detective Willis. *Id.*, Exs. 1-1, 1-3. As such, it is clear to the Court that Detective Willis provided her sworn statements to the magistrate in March of 2015, not on December 25, 2015.

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Ct. App. June 29, 2017) (panel denial).² Plaintiff then filed a Petition for Appeal in the Virginia Supreme Court, but his petition was refused. *See Commonwealth v. Mattison*, No. 17-1012 (Va. Dec. 12, 2017). Plaintiff's subsequent Petition for Rehearing was likewise refused by the Virginia Supreme Court. *See Commonwealth v. Mattison*, No. 17-1012 (Va. Feb. 28, 2018).

Plaintiff asserts that because the criminal acts of which he was accused – and for which he was ultimately convicted – were committed on HVAMC property (*i.e.*, "federal property"), the Commonwealth of Virginia lacked jurisdiction to prosecute Plaintiff. Am. Compl. at 5-7. However, Plaintiff attached a 1977 retrocession letter from the Administrator of Veterans Affairs as an exhibit to his Amended Complaint. *Id.*, Exs. 3-1, 3-2, 3-3. The letter, addressed to the Governor of Virginia, states, in pertinent part:

Pursuant to the authority vested in me . . . , I hereby retrocede and relinquish to the Commonwealth of Virginia, such measure of legislative jurisdiction as is necessary to establish concurrent jurisdiction over lands comprising the Veterans Administration Hospital at Salem and the Veterans Administration Center at Hampton. . . .

Exclusive jurisdiction over the lands comprising the Veterans Administration Center at Hampton . . . vested in the United States by virtue of Article I, Section 8, Clause 17 of the Constitution, with consent of the Commonwealth embodied in the Virginia Act of Cession. . . .

The retrocession to concurrent jurisdiction over said lands shall become effective upon your written acceptance.

Id., Exs. 3-2, 3-3. The Governor of Virginia signed the retrocession letter on June 20, 1977, stating: "The above retrocession to concurrent jurisdiction is accepted on behalf of the Commonwealth of Virginia." *Id.*, Ex. 3-3. The Office of the Secretary of the Commonwealth

² Plaintiff's case history before the Virginia courts, which can be found at <http://www.courts.state.va.us/caseinfo/home.html>, is a matter of public record of which this Court may properly take judicial notice. *Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

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subsequently issued a formal "ACCEPTANCE BY GOVERNOR MILLS E. GODWIN, JR. OF RETROCESSION OF JURISDICTION OFFERED BY THE UNITED STATES FOR LANDS COMPRISING THE VETERANS ADMINISTRATION HOSPITAL AT SALEM AND THE VETERANS ADMINISTRATION CENTER AT HAMPTON, VIRGINIA," which listed the effective date for the retrocession as June 24, 1977. *Id.*, Ex. 3-1 (capitalization in original). Despite this retrocession letter, Plaintiff claims that "sole criminal jurisdiction" over crimes on federal property is "in the hands of the United State[s]." *Id.* at 6.

Plaintiff further claims that his convictions – which he believes were rendered by the state court without "lawful jurisdictional authority" – ultimately led to the wrongful termination of his federal employment at the HVAMC. *Id.* at 8, 12-13, 18. On December 28, 2015, after Plaintiff was convicted of criminal wrongdoing in the Hampton General District Court, Plaintiff's employer proposed removing Plaintiff from his federal employment. Proposed Removal, attached as Ex. 1 to Judge Zamora's Mem. Supp. Mot. Dismiss, ECF No. 67-1.³ The proposed removal was based on the following two charges: (i) conduct unbecoming a federal employee, and (ii) failure to follow supervisory instructions. *Id.* The first charge was based on Plaintiff's conduct that resulted in his state court criminal conviction for stalking and making annoying phone calls. *Id.*

³ Judge Zamora and Mr. O'Boyle attached a number of exhibits to their Motions to Dismiss that provide additional details as to Plaintiff's termination process. Mem. Supp. Judge Zamora's Mot. Dismiss, Exs. 1-7, ECF No. 67; Mem. Supp. Mr. O'Boyle's Mot. Dismiss, Exs. 1-7, ECF No. 70. Because Judge Zamora and Mr. O'Boyle move for dismissal, in part, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the Court may consider the attached exhibits without converting the proceeding to one for summary judgment. *Velasco v. Gov't of Indon.*, 370 F.3d 392, 398 (4th Cir. 2004). The Court notes that Judge Zamora and Mr. O'Boyle attached identical exhibits to their motions. For ease of reference, the Court will cite only to the exhibits attached to Judge Zamora's motion.

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After reviewing Plaintiff's response to the proposed removal, his employer decided to terminate Plaintiff's employment, effective February 10, 2016. Removal, attached as Ex. 2 to Judge Zamora's Mem. Supp. Mot. Dismiss, ECF No. 67-2. Plaintiff was advised that he was entitled to appeal his termination to the Merit Systems Protection Board ("MSPB"), and Plaintiff did so on November 22, 2016. *Id.*; *see also* MSPB Appeal, attached as Ex. 3 to Judge Zamora's Mem. Supp. Mot. Dismiss, ECF No. 67-3. During the MSPB appeal, Mr. O'Boyle, an attorney with the Department of Veterans Affairs Office of General Counsel, represented Plaintiff's employer, and Judge Zamora served as the administrative judge. Am. Compl. at 2, 12-13; *see also* Initial Decision, attached as Ex. 4 to Judge Zamora's Mem. Supp. Mot. Dismiss, ECF No. 67-4. During the course of the MSPB appeal, Mr. O'Boyle requested that Judge Zamora apply the collateral estoppel doctrine to certain factual issues during Plaintiff's appeal. Am. Compl. at 13, 16; *see also* Order Granting Appl. of Collateral Estoppel in Part, attached as Ex. 6 to Judge Zamora's Mem. Supp. Mot. Dismiss, ECF No. 67-6; Order Amending Ruling on Collateral Estoppel, attached as Ex. 7 to Judge Zamora's Mem. Supp. Mot. Dismiss, ECF No. 67-7. In essence, Mr. O'Boyle requested that Judge Zamora rely on certain facts established in Plaintiff's state court criminal proceedings to avoid the re-litigation of certain factual issues upon which Plaintiff's removal was partially based. Judge Zamora granted Mr. O'Boyle's request. Am. Compl. at 13, 16; *see also* Order Granting Appl. of Collateral Estoppel in Part, ECF No. 67-6; Order Amending Ruling on Collateral Estoppel, ECF No. 67-7. On March 6, 2017, Judge Zamora issued an Initial Decision that affirmed the decision to terminate Plaintiff's employment. Initial Decision, ECF No. 67-4.

In the instant action, Plaintiff appears to allege that all Defendants knew that the Commonwealth of Virginia lacked jurisdiction to prosecute Plaintiff for criminal activity that

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allegedly occurred on HVAMC property, but chose to willfully participate in the process based on “their desire to remove [P]laintiff from federal service.” Am. Compl. at 4. Plaintiff categorizes the named Defendants as either “federal officials” or “state officials,” and summarizes his asserted claims against each group of individuals as follows:

A. **Federal officials** (a *Bivens* claim) for violations of Plaintiff’s federal constitutional rights under the 1st, 4th, 5th, 6th Amendments; violation of federal laws 42 U.S.C. § 1983, § 1985, § 1986, 18 U.S.C. § 7(3) territorial jurisdiction of the United States, § 13 (Assimilative Crimes Act: “the ACA”) and 38 CFR §§ 14.560 thru 561 (DVA “ACA”), 5 U.S.C. § 1204(a), § 7701 in a conspiracy resulting in a 14th Amendment violation.

B. **State officials** for violations of federal law: (1) 18 U.S.C. § 7(3) territorial jurisdiction of the United States, 42 U.S.C. § 1983, § 1985; violations of the Federal Constitution rights: art. I, sec 8, cl. 17/18; violation of the written agreement between the Governor of Virginia and Administrator of the Department of Veterans Affairs (DVA); causing violation of plaintiff’s federal constitutional rights under the 4th, 6th, 14th Amendments, and conspiracy resulting in a 14th Amendment violation.

Id. As relief, Plaintiff requests compensatory and punitive damages from all Defendants. *Id.* at 17-19.

All Defendants filed Motions to Dismiss and provided *pro se* Plaintiff with *Roseboro* notices pursuant to Rule 7(K) of the Local Civil Rules for the United States District Court for the Eastern District of Virginia. *See* Ms. Hunt & Ms. Mauney’s Mot. Dismiss, ECF No. 64; Judge Zamora’s Mot. Dismiss, ECF No. 66; Judge Zamora’s *Roseboro* Notice, ECF No. 68; Mr. O’Boyle’s Mot. Dismiss, ECF No. 69; Mr. O’Boyle’s *Roseboro* Notice, ECF No. 71; Detective Willis’s Mot. Dismiss, ECF No. 72; Detective Willis’s *Roseboro* Notice, ECF No. 74; Judge Jones’s Mot. Dismiss, ECF No. 75; Judge Henderson-Stith’s Mot. Dismiss, ECF No. 77; Ms. Hanna’s First Mot. Dismiss, ECF No. 95; Ms. Hanna’s Am. Mot. Dismiss, ECF No. 97; Ms.

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seeking to allege such joint activity must plead “more than a naked assertion of conspiracy between a state actor and private parties.” *Worthington*, 2015 U.S. Dist. LEXIS 159441, at *15. The plaintiff “must plausibly allege that Defendants acted jointly in concert, and that some overt act was done in furtherance of the conspiracy that resulted in the plaintiff’s deprivation of some constitutional right.” *Id.*

Here, it is clear that (i) Ms. Hanna, who served as Plaintiff’s criminal defense attorney, is not independently amenable to suit under § 1983, and (ii) Plaintiff’s allegations of joint activity with other state officials are no more than “naked assertion[s] of conspiracy” that are insufficient to allow this Court to consider Ms. Hanna to be a state actor.¹⁶ Additionally, it is clear that Plaintiff’s conclusory allegations of a conspiracy are likewise insufficient to state a plausible claim for relief under § 1985. *See Simmons v. Poe*, 47 F.3d 1370, 1377 (4th Cir. 1995) (explaining that mere conclusory allegations about the existence of a conspiracy are insufficient to state a claim under § 1985); *Keck v. Commonwealth*, No. 3:10cv555, 2011 U.S. Dist. LEXIS 115795, at *42 (E.D. Va. Sept. 9, 2011) (identifying the elements of a § 1985 claim, and explaining that the Fourth Circuit has “specifically rejected [§] 1985 claims whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts”). For these reasons, Ms. Hanna’s Amended Motion to Dismiss, ECF No. 97, is **GRANTED**.

III. Conclusion

For the reasons set forth above, Ms. Hunt & Ms. Mauney’s Motion to Dismiss, ECF No. 64, is **GRANTED**; Judge Zamora’s Motion to Dismiss, ECF No. 66, is **GRANTED**; Mr. O’Boyle’s Motion to Dismiss, ECF No. 69, is **GRANTED**; Detective Willis’s Motion to

¹⁶ The Court notes that even if Ms. Hanna could be considered to be a state actor, she – like several other Defendants discussed above – would be entitled to qualified immunity. *See supra* Part II.C-D.

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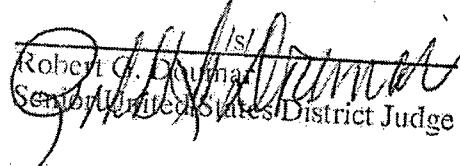
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Dismiss, ECF No. 72, is **GRANTED**; Judge Jones's Motion to Dismiss, ECF No. 75, is **GRANTED**; Judge Henderson-Stith's Motion to Dismiss, ECF No. 77, is **GRANTED**; Plaintiff's Request for Waiver Form, ECF No. 79, is **DISMISSED as moot**; Ms. Hanna's First Motion to Dismiss, ECF No. 95, is **DISMISSED as moot**; and Ms. Hanna's Amended Motion to Dismiss, ECF No. 97, is **GRANTED**.

Plaintiff may appeal this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Newport News Division, 2400 West Avenue, Newport News, Virginia 23607. The written notice must be received by the Clerk within sixty days from the date of entry of this Dismissal Order.

The Clerk is **DIRECTED** to send a copy of this Dismissal Order to Plaintiff and all counsel of record.

IT IS SO ORDERED.


/s/
Robert D. Doumar
Senior United States District Judge

Norfolk, Virginia

December 6, 2018

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**Additional material
from this filing is
available in the
Clerk's Office.**