

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-7043

MICHAEL ANTHONY DOBSON,

Plaintiff - Appellant,

v.

COLIN D. STOLLE, Commonwealth's Attorney's Office of Virginia Beach; MR. BERNARD W. BOOKER, Warden Buckingham Correctional Center; SCOTT LANG, Assistant Commonwealth's Attorney City of Virginia Beach; MS. PATRICIA MUNLEY, Investigator for the Commonwealth's Attorney's Office of Virginia Beach; DEREK M. REED, Detective Virginia Beach Police Department; MR. PHILIP WHITE, Assistant Warden Green Rock Corr. Center; MR. TOD WATSON, Special Investigator Unit V.D.O.C. Buckingham Corr. Center,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Michael F. Urbanski, Chief District Judge. (7:18-cv-00369-MFU-RSB)

Submitted: February 3, 2020

Decided: February 19, 2020

Before QUATTLEBAUM and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Michael Dobson, Appellant Pro Se. Jeff W. Rosen, PENDER & COWARD, PC, Virginia Beach, Virginia; Joseph Martin Kurt, Assistant City Attorney, OFFICE OF THE CITY

ATTORNEY FOR THE CITY OF VIRGINIA BEACH, Virginia Beach, Virginia, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Dobson appeals the district court's order granting Defendants' motions to dismiss his 42 U.S.C. § 1983 (2012) complaint pursuant to Fed. R. Civ. P. 12(b)(6). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Dobson v. Stolle*, No. 7:18-cv-00369-MFU-RSB (W.D. Va. July 9, 2019). We deny Dobson's motion for a certificate of appealability and for appointment of counsel and 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

FILED: February 19, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7043
(7:18-cv-00369-MFU-RSB)

MICHAEL ANTHONY DOBSON

Plaintiff - Appellant

v.

COLIN D. STOLLE, Commonwealth's Attorney's Office of Virginia Beach; MR. BERNARD W. BOOKER, Warden Buckingham Correctional Center; SCOTT LANG, Assistant Commonwealth's Attorney City of Virginia Beach; MS. PATRICIA MUNLEY, Investigator for the Commonwealth's Attorney's Office of Virginia Beach; DEREK M. REED, Detective Virginia Beach Police Department; MR. PHILIP WHITE, Assistant Warden Green Rock Corr. Center; MR. TOD WATSON, Special Investigator Unit V.D.O.C. Buckingham Corr. Center

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: February 19, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 19-7043, Michael Dobson v. Colin Stolle
7:18-cv-00369-MFU-RSB

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7043
(7:18-cv-00369-MFU-RSB)

MICHAEL ANTHONY DOBSON

Plaintiff - Appellant

v.

COLIN D. STOLLE, Commonwealth's Attorney's Office of Virginia Beach; MR. BERNARD W. BOOKER, Warden Buckingham Correctional Center; SCOTT LANG, Assistant Commonwealth's Attorney City of Virginia Beach; MS. PATRICIA MUNLEY, Investigator for the Commonwealth's Attorney's Office of Virginia Beach; DEREK M. REED, Detective Virginia Beach Police Department; MR. PHILIP WHITE, Assistant Warden Green Rock Corr. Center; MR. TOD WATSON, Special Investigator Unit V.D.O.C. Buckingham Corr. Center

Defendants - Appellees

O R D E R

The court denies the motion to reconsider and 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.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7043
(7:18-cv-00369-MFU-RSB)

MICHAEL ANTHONY DOBSON

Plaintiff - Appellant

v.

COLIN D. STOLLE, Commonwealth's Attorney's Office of Virginia Beach; MR. BERNARD W. BOOKER, Warden Buckingham Correctional Center; SCOTT LANG, Assistant Commonwealth's Attorney City of Virginia Beach; MS. PATRICIA MUNLEY, Investigator for the Commonwealth's Attorney's Office of Virginia Beach; DEREK M. REED, Detective Virginia Beach Police Department; MR. PHILIP WHITE, Assistant Warden Green Rock Corr. Center; MR. TOD WATSON, Special Investigator Unit V.D.O.C. Buckingham Corr. Center

Defendants - Appellees

STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc

or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

FILED: May 19, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7043
(7:18-cv-00369-MFU-RSB)

MICHAEL ANTHONY DOBSON

Plaintiff - Appellant

v.

COLIN D. STOLLE, Commonwealth's Attorney's Office of Virginia Beach; MR. BERNARD W. BOOKER, Warden Buckingham Correctional Center; SCOTT LANG, Assistant Commonwealth's Attorney City of Virginia Beach; MS. PATRICIA MUNLEY, Investigator for the Commonwealth's Attorney's Office of Virginia Beach; DEREK M. REED, Detective Virginia Beach Police Department; MR. PHILIP WHITE, Assistant Warden Green Rock Corr. Center; MR. TOD WATSON, Special Investigator Unit V.D.O.C. Buckingham Corr. Center

Defendants - Appellees

M A N D A T E

The judgment of this court, entered February 19, 2020, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

FILED: February 25, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7043
(7:18-cv-00369-MFU-RSB)

MICHAEL ANTHONY DOBSON

Plaintiff - Appellant

v.

COLIN D. STOLLE, Commonwealth's Attorney's Office of Virginia Beach; MR. BERNARD W. BOOKER, Warden Buckingham Correctional Center; SCOTT LANG, Assistant Commonwealth's Attorney City of Virginia Beach; MS. PATRICIA MUNLEY, Investigator for the Commonwealth's Attorney's Office of Virginia Beach; DEREK M. REED, Detective Virginia Beach Police Department; MR. PHILIP WHITE, Assistant Warden Green Rock Corr. Center; MR. TOD WATSON, Special Investigator Unit V.D.O.C. Buckingham Corr. Center

Defendants - Appellees

ORDER

Upon consideration of submissions relative to the motion for protective custody and the motion to add newly discovered evidence, the court denies the motions.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

Entered at the direction of the panel: Judge Quattlebaum, Judge Rushing,
and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

MICHAEL A. DOBSON,
Plaintiff,

v.

COLIN D. STOLLE, et al.,
Defendants.

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Civil Action No. 7:18cv00369

ORDER

By: Michael F. Urbanski
Chief United States District Judge

This matter is before the court on Dobson's motion pursuant to Federal Rule of Civil Procedure 59(e). Dobson asks the court to alter or amend its memorandum opinion and order granting defendants' motion to dismiss Dobson's civil rights complaint filed pursuant to 42 U.S.C. § 1983. Rule 59(e) allows a court to alter or amend a judgment "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available [previously]; or (3) to correct a clear error of law or prevent manifest injustice." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1988). "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance." Id. "If a party relies on newly discovered evidence in its Rule 59(e) motion, the party must produce a legitimate justification for not presenting the evidence during the earlier proceeding." Id. (internal citations omitted). The purpose of a Rule 59(e) motion is not to give "an unhappy litigant one additional chance to sway the judge." Durkin v. Taylor, 444 F. Supp. 879, 889 (E.D. Va. 1977). In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly. Pac. Ins. Co., 148 F.3d at 403 (internal citations omitted).

Dobson cites no changes to the law, presents no evidence that post-dates the dismissal order, and fails to demonstrate "a clear error of law or [] manifest injustice." Having reviewed the record, the court concludes that Dobson is not entitled to relief under Rule 59(e) and, therefore, it is hereby **ORDERED** that Dobson's motion for reconsideration (ECF No. 81) is **DENIED**.

The Clerk shall send a copy of this order to the parties.

ENTER: This 29th day of July, 2019.

/s/ Michael F. Urbanski
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JUL 09 2019

JULIA C. BUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

MICHAEL ANTHONY DOBSON,)
Plaintiff)

CASE NO. 7:18-CV-00369

v.)

COLIN D. STOLLE, et al.,)
Defendants)

By: Hon. Michael F. Urbanski
Chief United States District Judge

MEMORANDUM OPINION

Michael Anthony Dobson, currently incarcerated at Red Onion State Prison, complains that he is suffering an ongoing violation of his constitutional rights. Proceeding pro se, Dobson filed this lawsuit seeking relief via 42 U.S.C. § 1983. Defendants Scott Lang, Patricia Munley, and Colin D. Stolle (the Commonwealth defendants), filed a motion to dismiss on November 1, 2018. ECF No. 24. Defendants Bernard T. Booker, Tod Watson, and Philip White (the BCC defendants), filed a motion to dismiss on November 6, 2018. ECF No. 32. Defendant Derek M. Reed filed a motion to dismiss on November 29, 2018. ECF No. 41. Also pending is Dobson's motion to amend pleadings. ECF No. 50. The parties have fully briefed the issues.

For the reasons set forth below, Dobson's motion to amend is **GRANTED**; the motions to dismiss are **GRANTED**; and Dobson's federal causes of action are **DISMISSED**.

The court declines to exercise jurisdiction over Dobson's state law causes of action.

JUL 09 2019

JULIA C. DUDLEY, CLERK
BY: *A. Gessen*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MICHAEL ANTHONY DOBSON,)
Plaintiff)

CASE NO. 7:18-CV-00369

v.)

COLIN D. STOLLE, et al.,)
Defendants)

By: Hon. Michael F. Urbanski
Chief United States District Judge

ORDER

In accordance with the accompanying memorandum opinion, it is hereby
ADJUDGED AND ORDERED that the plaintiff's motion to amend (ECF No. 50) is
GRANTED. The motions to dismiss (ECF Nos. 24, 32, 41) are **GRANTED**, and the
plaintiff's complaint for violation of constitutional rights brought pursuant to 42 U.S.C. § 1983
is **DISMISSED**, and the clerk shall **STRIKE** this action from the active docket of the court.

ENTERED: 07-09-2019

/s/ Michael F. Urbanski

Michael F. Urbanski
Chief United States District Judge

Accordingly, the motion to dismiss filed by defendants Scott Lang, Patricia Munley, and Colin D. Stolle, ECF No. 24, is **GRANTED** and the claims against them are **DISMISSED**; the motion to dismiss filed by defendants Bernard T. Booker, Tod Watson, and Philip White, ECF No. 32, is **GRANTED** and the claims against them are **DISMISSED**; the motion to dismiss filed by defendant Derek M. Reed, ECF No. 41, is **GRANTED** and the claims against him are **DISMISSED**. Dobson's motion to amend pleadings, ECF No. 50, is **GRANTED**. Any state law claims raised by Dobson are **DISMISSED** without prejudice.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to Dobson and to counsel of record for defendants.

An appropriate order will be entered.

It is so **ORDERED**.

ENTERED: 07-09-2019

/s/ Michael F. Urbanski

Michael F. Urbanski
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MICHAEL ANTHONY DOBSON,
Plaintiff,

v.

COLIN D. STOLLE, et al.,
Defendants.

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Civil Action No. 7:18cv00369

ORDER

By: Robert S. Ballou
United States Magistrate Judge

This matter is before the court upon plaintiff's motion for appointment of counsel in this civil rights action, pursuant to 42 U.S.C. § 1983. The court cannot require an attorney to represent an indigent civil plaintiff. See Mallard v. United States D. for S. Dist. of Iowa, 490 U.S. 296, 309 (1989). However, the court may request that an attorney represent an indigent plaintiff when "exceptional circumstances" exist. Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). Exceptional circumstances depend on the type and complexity of the case and the ability of the plaintiff to present it. Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984), abrogated on other grounds by Mallard, 490 U.S. at 309. The court finds that plaintiff's circumstances are not sufficiently exceptional to justify appointment of counsel at this time, and it is hereby **ORDERED** that plaintiff's motion for appointment of counsel (ECF No. 49) is **DENIED without prejudice**. Plaintiff may renew a motion for appointment of counsel in the event that this case is set for a hearing or trial.

The Clerk shall send a certified copy of this Order to the parties.

ENTER: This 19th day of December, 2018.

s/Robert S. Ballou
United States Magistrate Judge

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