

UNPUBLISHED

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

No. 20-7474

DERRICK ALLEN,

Plaintiff - Appellant,

v.

TOWN OF CARY POLICE DEPARTMENT; TONI DEZOMITS, Police Chief; N.
COFFEY, Police Officer,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. Terrence W. Boyle, District Judge. (5:20-cv-00144-BO)

Submitted: January 19, 2021

Decided: January 22, 2021

Before AGEE, WYNN, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Derrick Michael Allen, Sr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Allen seeks to appeal the district court's order adopting the magistrate judge's recommendation and dismissing two of the three defendants in his civil action. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Allen seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss the appeal for lack of jurisdiction and deny Allen's motion for a transcript at government expense. 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.

DISMISSED

FILED: January 22, 2021

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Plaintiff - Appellant

v.

TOWN OF CARY POLICE DEPARTMENT; TONI DEZOMITS, Police Chief;
N. COFFEY, Police Officer

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-CV-144-BO(2)

DERRICK ALLEN.

Plaintiff.

v.

TOWN OF CARY'S POLICE
DEPARTMENT, POLICE CHIEF TONI
DEZOMITS & OFFICER N. COFFEY.

Defendants.

ORDER

This matter is before the Court on the Memorandum and Recommendation ("M&R") of United States Magistrate Judge Kimberly A. Swank [DE 16] regarding frivolity review pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff has filed an objection to the M&R. For the reasons discussed below, the Court adopts the M&R in its entirety and the claims against Town of Cary Police Department and Chief of Police Toni DeZomits are dismissed as frivolous.

A claim proceeding *in forma pauperis* may be dismissed at any time if it is frivolous. 28 U.S.C. § 1915(c)(2)(B)(i). A complaint is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A plaintiff proceeding *in forma pauperis* must "meet certain minimum standards of rationality and specificity," and delusional or fantastic claims which are clearly baseless are subject to dismissal. *Adams v. Rice*, 40 F.3d 72, 74 (4th Cir. 1994). A court may also dismiss all or any part of a complaint which fails to state a claim upon which relief can be granted or which seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2)(B).

FILED: March 30, 2021

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(5:20-cv-00144-BO)

DERRICK ALLEN

Plaintiff - Appellant

v.

TOWN OF CARY POLICE DEPARTMENT; TONI DEZOMITS, Police Chief;
N. COFFEY, Police Officer

Defendants - Appellees

O R D E R

The court denies the petitions 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 Agee, Judge Wynn, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk