CASE NO. 21-6690

IN THE
SUPREME COURT OF THE UNITED STATES

JOE PYATT,

Petitioner,

v.

AECOM TECHNICAL SERVICES, INC.,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Eleventh Circuit

# RESPONDENT'S APPENDIX
# TO ITS BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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## CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2022, I sent the foregoing document by electronic mail, regular mail, and Federal Express (overnight delivery) to:

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_____
OF COUNSEL

# EXHIBIT “A”

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No. 19-cv-23708-UU

JOE PYATT,

Plaintiff,

v.

AECOM TECHNICAL SERVICES, INC.,

Defendant.
_____/

**ORDER**

THIS CAUSE comes before the Court upon Defendant's Summary Judgment Motion (the "Motion"). D.E. 74.

THE COURT has considered the Motion and the pertinent portions of the record and is otherwise fully advised on the premises. For the reasons that follow, the Motion is GRANTED.

## I. Local Rule 56.1

As an initial matter, the facts proffered by Defendant in its Statement of Material Facts are deemed admitted. Plaintiff failed to file a Statement of Material Facts challenging the facts proffered by the Defendant as required by Local Rule 56.1, and the facts proffered by the Defendant are supported by the record.

The Court "places great emphasis upon, and implores parties to be mindful of, the fact that local rules have 'the force of law.'" *State Farm Mut. Auto. Ins. Co. v. B&A Diagnostic, Inc.*, 145 F. Supp. 3d 1154, 1158 (S.D. Fla. 2015) (citing *Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010)). Under Local Rule 56.1, "[a] motion for summary judgment and the opposition to it shall each be accompanied by a separate and contemporaneously filed and served Statement of Material Facts."

S.D. Fla. L.R. 56.1(a)(1). The "opponent's Statement of Material Facts shall clearly challenge any purportedly material fact asserted by the movant that the opponent contends is genuinely in dispute." S.D. Fla. L.R. 56.1(a)(2). Importantly, "[a]ll material facts in any party's Statement of Material Facts may be deemed admitted unless controverted by the other party's Statement of Material Facts, provided that: (i) the Court finds that the material fact at issue is supported by properly cited record evidence; and (ii) any exception under Fed. R. Civ. P. 56 does not apply." S.D. Fla. L.R. 56.1(c).

The Court recognizes that Plaintiff is not represented by counsel, but his "*pro se* status does not excuse [] compliance with the Local Rules of this Court." *See Fed. Trade Comm'n v. Pointbreak Media, LLC*, 376 F. Supp. 3d 1257, 1275 (S.D. Fla. 2019) (citing *Williams v. Slack*, 438 F. App'x 848, 950 (11th Cir. 2011)). Moreover, Plaintiff has been on notice since the beginning of this case of his obligation to comply with the Local Rules and the Federal Rules of Civil Procedure. *See* D.E. 5.

Nevertheless, the Court in its discretion has endeavored to consider the arguments made by Plaintiff and the record citations included in his opposition to the Motion. Having made an independent review of the record, the Court finds that Plaintiff cites numerous "facts" in his opposition that are largely immaterial and fails to respond to the legal deficiencies in his claims identified by Defendant. Accordingly, and for the reasons explained below, summary judgment will be granted for the Defendant.

## II. Background

The material facts set forth below are either undisputed, deemed admitted, or viewed in the light most favorable to Plaintiff unless otherwise noted:

A. Plaintiff Obtains Employment with Defendant

Defendant is an engineering firm with its headquarters in California. D.E. 75 ¶ 1. On April 20, 2017, Samuel Worthy, a civil engineer employed by Defendant, attended a job fair for college students on behalf of Defendant and was introduced to Plaintiff. *Id.* ¶ 2. Mr. Worthy was impressed with Plaintiff and discussed potential employment opportunities for Plaintiff with Defendant. *Id.* ¶ 5. Based on Mr. Worthy's encouragement, Plaintiff applied for an entry-level position with Defendant on the day following the job fair. *Id.* Shortly thereafter, Mr. Worthy wrote to Plaintiff via email, in which he advised Plaintiff that he had spoken with his supervisor, asked for Plaintiff's resume, and stated that he was "going to refer [Plaintiff] for the open position." *Id.* ¶ 6. In fact, Mr. Worthy referred Plaintiff for the position, and Plaintiff confirms that he was hired "mostly solely because of [Mr. Worthy]." *Id.* ¶ 7.

On July 7, 2017, Defendant offered Plaintiff an entry-level position as a Roadway Engineering Technician. *Id.* ¶ 8. Defendant's Senior Manager of Engineering, Gorky Charpentier, acted as Plaintiff's supervisor. *Id.* Mr. Charpentier was supervised by Carlos Zea, Defendant's Vice President, Highway Manager. *Id.* Carlos Garcia, Defendant's Vice President, Florida Transportation State Lead, supervised Mr. Zea. *Id.* Mr. Garcia also manages Defendant's South Florida office. *Id.*

B. Plaintiff's Performance Issues

Initially, Mr. Charpentier assigned Plaintiff to assist on projects with Mr. Worthy. *Id.* ¶ 9. Mr. Worthy worked with Plaintiff from July 2017 until approximately May 2018. *Id.* ¶ 11. Mr. Worthy believed that Plaintiff "was focused during his first few months," but thereafter, "he and others found that Plaintiff encountered many performance problems." *Id.* ¶ 12. Specifically, Plaintiff had to "redo projects, failed to review assignments, had misspellings, and provided a poor

work product." *Id.* Mr. Worthy documented these concerns to Mr. Charpentier via email on April 5, 2018. *Id.* ¶ 13. In that email, Mr. Worthy explained that (1) Plaintiff deliberately disobeyed his instructions; (2) Plaintiff's attitude and communication style were problematic; (3) Plaintiff became argumentative when informed that he improperly performed an assigned task; (4) Plaintiff refused to accept constructive criticism; and (5) Plaintiff failed to improve his performance despite multiple attempts to address these issues. *Id.* ¶¶ 14–19.

Several weeks later, Mr. Worthy advised Plaintiff and Mr. Charpentier of continued problems with Plaintiff's work performance. *Id.* ¶ 20-21. For example, Defendant was forced to restrict Plaintiff's access to certain files to a "read-only" basis because Plaintiff modified structural designs for proposed bridges. *Id.* ¶ 22. In his deposition, Plaintiff acknowledged that changing a structural design "can cause a catastrophe." *Id.* ¶ 23. On a separate occasion, Mr. Worthy counseled Plaintiff that Plaintiff "again made incorrect conclusions on a project which had not been assigned to him and sent his incorrect conclusions to others, misleading them to believe that the design was flawed." *Id.* ¶ 28.

On April 26, 2018, Mr. Charpentier, Mr. Zea, and Mr. Garcia met to address Plaintiff's performance and behavioral issues and decided to prepare a written performance improvement plan ("PIP"). *Id.* ¶ 24. On May 7, 2018, Plaintiff met with Mr. Garcia, Mr. Charpentier, and Defendant's Human Resources Outside Representative, Rebecca Devivo, for his performance review. *Id.* ¶ 30. During this meeting, Plaintiff was given the PIP, which, in addition to Plaintiff's work performance, addressed Plaintiff's behavioral problems, including his argumentative and defensive behavior, failure to accept responsibility for mistakes, and inability to conform to an assigned work schedule. *Id.* ¶ 32.

Plaintiff's performance did not improve. *Id.* ¶ 34. And on June 6, 2018, Plaintiff met with Mr. Charpentier and another manager to discuss Plaintiff's continued performance issues. *Id.* ¶ 37. During the meeting, Plaintiff "refused to take responsibility for his mistakes, blamed others, was belligerent and argumentative, and yelled at Mr. Charpentier." *Id.* ¶ 38.

C. Plaintiff Files Complaints Against Mr. Worthy and Mr. Charpentier

On June 7, 2018, Plaintiff contacted Defendant's human resources department to file a complaint against Mr. Worthy. *Id.* ¶ 39. In the complaint, Plaintiff stated that on October 31, 2017, Mr. Worthy brought to work "a black mask that he claimed was to make Mario [Ramos] pretend to be a stranger with a black mask giving out candy." *Id.* ¶ 40. Mr. Worthy purchased the mask, which is sold in all colors, in a Halloween store in Miami Beach. *Id.* ¶¶ 45, 47. According to Mr. Worthy, he suggested that Mr. Ramos wear the mask because he had no costume. *Id.* ¶ 49. However, neither Mr. Ramos nor anyone else wore the mask. *Id.* ¶ 50. Defendant contends that the mask "has no racial connotation, but is rather a theatrical mask." *Id.* ¶ 44. Plaintiff, on the other hand, alleges that the black mask is a representation of "black face." *Id.* ¶ 40. Plaintiff testified that the mask is "a new trend and it's not known," and that he only learned about the black mask after recently watching a Netflix show titled "Dear White People." *Id.* ¶ 55.

Teresa Pownall, a member of Defendant's Employee Relations & Compliance department, investigated Plaintiff's allegations and found no evidence of discrimination. *Id.* ¶ 51. In his deposition, Plaintiff conceded that he initiated this complaint because of the June 6, 2018 meeting. *Id.* ¶ 42. Moreover, Plaintiff did not identify any purportedly racist acts attributable to Mr. Worthy that occurred before or after October 31, 2017. *Id.* ¶ 54. In other words, Mr. Worthy's only purportedly racist act is with respect to the mask. *Id.* ¶ 53.

On approximately July 3, 2018, Mr. Charpentier asked Plaintiff to assist him with an important presentation that Defendant would be making to a potential client on Monday, July 16, 2018. *Id.* ¶ 58. By Friday, July 13, 2018, Mr. Charpentier received an unacceptable work product from Plaintiff, and on Monday, July 16, 2018, Mr. Charpentier informed Plaintiff as much. *Id.* ¶ 63. Plaintiff testified that Mr. Charpentier "was very upset." *Id.* ¶ 64. On July 17, 2018, Plaintiff sent an email to Ms. Pownall, in which he alleged that he was "experiencing unethical behavior by my supervisor." *Id.* ¶ 65. After investigating Plaintiff's allegations, Ms. Pownall did not find any evidence to substantiate Plaintiff's claims of unethical behavior. *Id.* ¶ 67.

On September 18, 2018, Ms. Pownall spoke with Plaintiff, who stated that he had taken time off in July and August and had been working exclusively with a different project manager, Genevieve Cave-Hunt. *Id.* ¶ 68. Plaintiff stated that "work [was] calm," and he claimed that "things have been on a 'corrective measure.'" *Id.* ¶ 70. Plaintiff testified that from July 17, 2018 until October 1, 2018, he did not encounter any racism or discrimination at work. *Id.* ¶ 71.

D. Plaintiff's Altercation with the Office Building's Security Guard

On October 1, 2018, Plaintiff's car needed a jump start, and Plaintiff asked the security guard in the lobby of Defendant's office building to use his phone. *Id.* ¶ 72. After making the phone call, Plaintiff sat down on a sofa in the lobby, waited for over 90 minutes, and "went into the slouch position." *Id.* ¶ 73. The security guard approached Plaintiff and informed him that he was not allowed to sleep in the building lobby. *Id.* ¶ 75. According to Plaintiff's testimony, the following events ensued:

> He then threatened to call the police on me. When he threatened to call the police on me, that's when my tone of voice got louder. And I said: "I will not accept you talking to me in such a manner, threaten the police where I work. . . . Not only that, I can slouch on the couch if I want to. . . . His job is to be security. He has absolutely no right to tell me not to slouch on the couch. . . . After he threatens to call

> the police on me, my voice gets louder. Another security guard had came in and they are de-escalating the situation.

*Id.* ¶ 76.

Witnesses described the situation as one in which Plaintiff "was yelling at the security guard in a threatening manner," and witnesses "were concerned for the security guard's safety." *Id.* ¶ 77. According to Ms. Pownall's subsequent investigation, one witness stated that he "saw this gentleman (Plaintiff) yelling at the security guard at the top of his lungs and described the incident as something you'd see in a movie." *Id.* ¶ 78. That witness described Plaintiff as "irate" and went to the building next door to advise the security personnel "as to what was occurring at his building and asked them to call 911 due to security and safety concerns." *Id.* In addition, the security guard's supervisor immediately went to the lobby after learning of the incident. *Id.* ¶ 79. When the supervisor arrived, "Plaintiff was screaming, extremely upset, and using profanity." *Id.* ¶ 80.

During this incident, one of Defendant's employees was exiting the building, and when she learned about what was occurring, she contacted Mr. Garcia and informed him of the incident. *Id.* ¶ 84. Mr. Garcia spoke with the security guard and his supervisor, who confirmed that Plaintiff "was agitated, screaming, and using profanities." *Id.* ¶ 85. The next day, Mr. Garcia reported the incident to Defendant's human resources department. *Id.* ¶ 86. Mr. Garcia also called Plaintiff and advised him not to return to the office until Defendant investigated the incident. *Id.*

Ms. Pownall investigated the incident and spoke with witnesses who confirmed Plaintiff's "improper and threatening behavior." *Id.* ¶ 87. Based on Ms. Pownall's investigation results, Mr. Garcia made the decision to terminate Plaintiff's employment. *Id.* ¶ 88. Neither Mr. Charpentier nor Mr. Worthy were involved in the decision to terminate Plaintiff. *Id.* ¶ 89.

## III. Legal Standard

Summary judgment is authorized only when the moving party meets its burden of demonstrating that "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. When determining whether the moving party has met this burden, the Court must view the evidence and all factual inferences in the light most favorable to the non-moving party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Rojas v. Florida*, 285 F.3d 1339, 1341-42 (11th Cir. 2002).

The party opposing the motion may not simply rest upon mere allegations or denials of the pleadings; after the moving party has met its burden of proving that no genuine issue of material fact exists, the non-moving party must make a showing sufficient to establish the existence of an essential element of that party's case and on which that party will bear the burden of proof at trial." *See Celotex Corp. v. Catrell*, 477 U.S. 317 (1986); *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551, 553 (11th Cir. 1997); *Barfield v. Brierton*, 883 F.2d 923, 933 (11th Cir. 1989).

If the record presents factual issues, the Court must not decide them; it must deny the motion and proceed to trial. *Envntl. Def. Fund v. Marsh*, 651 F.2d 983, 991 (5th Cir. 1981). Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. *Lighting Fixture & Elec. Supply Co. v. Cont'l Ins. Co.*, 420 F.2d 1211, 1213 (5th Cir. 1969). If reasonable minds might differ on the inferences arising from undisputed facts, then the Court should deny summary judgment. *Impossible Elec. Techs., Inc. v. Wackenhut Protective Sys., Inc.*, 669 F.2d 1026, 1031 (5th Cir. 1982); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("[T]he dispute

about a material fact is 'genuine' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.").

Moreover, the party opposing a motion for summary judgment need not respond to it with evidence unless and until the movant has properly supported the motion with sufficient evidence. *Adickes*, 398 U.S. at 160. The moving party must demonstrate that the facts underlying the relevant legal questions raised by the pleadings are not otherwise in dispute, or else summary judgment will be denied notwithstanding that the non-moving party has introduced no evidence whatsoever. *Brunswick Corp. v. Vineberg*, 370 F.2d 605, 611-12 (5th Cir. 1967). The Court must resolve all ambiguities and draw all justifiable inferences in favor of the non-moving party. *Liberty Lobby, Inc.*, 477 U.S. at 255.

## IV. Analysis

Plaintiff's Amended Complaint alleges claims of race discrimination (Count I) and retaliation (Count II) in violation of the Florida Civil Rights Act (the "FCRA").[1] D.E. 28. Under Count I, Plaintiff asserts that he "was subjected to disparate treatment in the work place," and that he "was terminated as a result of his race." *Id.* In Count II, Plaintiff asserts that Defendant engaged in "unlawful retaliation after Plaintiff reported unlawful employment practices adversely affecting him." *Id.* As a preliminary matter, "[c]laims under the FCRA are analyzed under the same framework as claims brought under Title VII or the ADEA." *Thomas v. Seminole Elec. Coop. Inc.*, 775 F. App'x 651, 654–55 (11th Cir. 2019) (citing *Jones v. United Space All., LLC*, 494 F.3d 1306, 1310 (11th Cir. 2007); *see also Sunbeam TV Corp. v. Mitzel*, 83 So. 3d 865, 867 n.3 (Fla 3d

[1] As filed, Plaintiff's Amended Complaint alleges four causes of action against Defendant. The Court, however, previously dismissed Counts III and IV with prejudice. D.E. 35.

DCA 2012) ("Florida courts apply federal case law interpreting Title VII and the ADEA to cases arising under the FCRA.").

A. Count I – Discrimination Based on Race

Where, as here, a plaintiff lacks direct evidence of discrimination, the plaintiff's claims are analyzed under the *McDonnell Douglas* framework. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Pursuant to *McDonnell Douglas*, the plaintiff bears the initial burden of establishing a prima facie case of racial discrimination. *Id.* To do so, a plaintiff must establish that: "(1) he is a member of a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) he was replaced by a person outside his protected class or was treated less favorably than a similarly-situated individual outside his protected class." *Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003). If the plaintiff succeeds in establishing a prima facie case of racial discrimination, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the defendant's actions. *McDonnell Douglas Corp*, 411 U.S. at 802. And if the defendant proffers a nondiscriminatory rationale, then the burden shifts back to the plaintiff to show that this basis was pretext for racial discrimination. *Id.* at 805.

Defendant argues that it is entitled to summary judgment on Count I because Plaintiff cannot establish a prima facie case of discrimination. D.E. 74, pp. 15–17. Specifically, with respect to the fourth element, Defendant argues that "Plaintiff has not and cannot identify a similarly situated non-African-American comparator who was not terminated for engaging in a significant altercation." *Id.* at 17.

In his opposition, Plaintiff responds that he "has shown multiple instances of material facts where he was treated differently than others that include unrelated work criticism." D.E. 85, p. 12. Plaintiff asserts that one such instance was the fact that "Plaintiff was told he was not allowed

to come to work early nor leave late because he makes people uncomfortable in the office." *Id.* The other "instances of material facts" presumably consist of Plaintiff's contentions in his opposition that he "was removed from the roadway design group and was subjected to unusual work practices," that he "was disciplined for reporting a safety observation," that he was not "allowed to do school work in the office," that he "was not given any work to do," and that he "was forced to use PTO time when other employees had work to do and did not have to use PTO time during regular business hours." *Id.* at 8–11.

Under the first part of the analysis, and in viewing the evidence and all factual inferences in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to establish that he was treated less favorably than a similarly situated individual outside his protected class. As a starting point, to establish the fourth element of a prima facie case of discrimination, "a plaintiff must show that she and her comparators are 'similarly situated in all material respects.'" *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1224 (11th Cir. 2019). Here, Plaintiff has failed to identify a single comparator, much less provide any evidence that would allow the Court to find that a genuine issue of material exists with respect to whether a proffered comparator was similarly situated to Plaintiff in all material respects. Instead, Plaintiff simply relies on unsupported and unsubstantiated allegations of how he was "the only employee" who was subject to certain working conditions and limitations.

Yet, even if Plaintiff could establish a prima facie case of discrimination, Defendant still would be entitled to summary judgment because Defendant proffers legitimate, nondiscriminatory reasons for terminating Plaintiff, and Plaintiff fails to demonstrate that those reasons are merely a pretext for discrimination. First, the Court finds that Defendant offers record evidence to establish that Plaintiff's poor performance led to his termination. The declarations of Mr. Worthy and Mr.

Charpentier attest to Plaintiff's performance issues during his employment with Defendant. *See* D.E. 74-2, D.E. 74-3. An employee's inadequate skill and performance is a legitimate, nondiscriminatory reason to terminate that employee. *Thomas v. Seminole Elec. Coop. Inc.*, 775 F. App'x 651, 656 (11th Cir. 2019) (affirming the district court's grant of summary judgment to the defendant-employer because the plaintiff failed to show that the defendant's "legitimate, non-discriminatory reason for terminating her—inadequate skills and performance—was pretextual"); *see also Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, (11th Cir. 1999) ("In this case, [the defendant] clearly offered legitimate, nondiscriminatory reasons for terminating [the plaintiff] (poor performance) . . . .").

In addition, the Defendant has pointed to unrefuted evidence that demonstrates that Plaintiff was terminated due to an "unprofessional and threatening altercation" with a security guard on Defendant's work premises, in which Plaintiff "was screaming, extremely upset, and using profanity."[2] D.E. 74, p. 17. Defendant offers the declarations of Mr. Garcia and Ms. Pownall to confirm that Plaintiff was terminated due to the altercation with the security guard. *See* D.E. 74-1, D.E. 74-4. "Fighting with or using abusive language towards another employee on work premises in violation of company policy plainly qualifies as a legitimate, non-discriminatory reason for terminating an employee." *Rodriguez v. Cargo Airport Servs. USA, LLC*, 648 F. App'x 986, 990 (11th Cir. 2016); *Watson v. Kelley Fleet Servs., LLC*, 430 F. App'x 790, 791 (11th Cir. 2011) ("The district court did not err when granting summary judgment because [the plaintiff] was unable to show [the defendant's] articulated reason for firing him—that he threatened violence in the workplace, which was a ground for immediate termination under [the defendant's] policies—was pretext for race discrimination or retaliation."). The Court thus finds that Defendant clearly

[2] In fact, Plaintiff's opposition fails to address this incident altogether.

has satisfied its burden to produce a legitimate, nondiscriminatory reason for Plaintiff's termination.

The burden then shifts back to Plaintiff, who must show that Defendant's reason for terminating Plaintiff was merely pretext for racial discrimination. But Plaintiff offers no such evidence. Plaintiff's own speculation as to his own performance is insufficient to defeat summary judgment. *See Brown v. Publix Super Mkts., Inc.*, 626 F. App'x 793, 797 (11th Cir. 2015); *see also Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment."). Indeed, an employee's "own assessment of his performance as exceeding expectations [is] insufficient to show pretext." *Brown v. Synovus Fin. Corp.*, 783 F. App'x 923, 929 (11th Cir. 2019). Moreover, Plaintiff entirely fails to address the altercation with the security guard in his opposition. Accordingly, the Court finds that Plaintiff has failed to satisfy his burden under the *McDonnell Douglas* framework. Therefore, Defendant is entitled to summary judgment on Count I of Plaintiff's Amended Complaint.

B. Count II – Retaliation

To establish a prima facie case for retaliation, a plaintiff must show that "(1) he engaged in statutorily protected expression; (2) he suffered an adverse employment action; and (3) there is a causal connection between the two events." *Shannon v. Bellsouth Telecomms., Inc.*, 292 F.3d 712, 715 (11th Cir. 2002) (alterations and citation omitted). As with a discrimination claim, "if a plaintiff makes out a prima facie cause of retaliation, the burden shifts to the defendant to produce legitimate reasons for the adverse employment action." *Id.* (internal quotation marks and citation omitted). And "[i]f the defendant does so, the plaintiff must show that the reasons the defendant gave were pretextual." *Id.*

With respect to the third element of the prima facie case, the Eleventh Circuit has instructed that the causal connection requirement "must be construed broadly," such that "a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated." *Olmsted v. Taco Bell Corp.*, 141 F.3d 1457, 1460 (11th Cir. 1998). A plaintiff may satisfy this element "if he provides sufficient evidence that the decision-maker became aware of the protected conduct, and that there was a close temporal proximity between this awareness and the adverse action." *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1180, n.30 (11th Cir. 2003). Still, the "mere temporal proximity between knowledge of protected activity and an adverse employment action . . . must be 'very close'." *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001); *see also Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004) (holding that a three-month period between protected expression and an adverse action, absent any other evidence of causation, was insufficient to establish a causal connection).

In the Motion, Defendant does not dispute that Plaintiff "engaged in protected activity on June 7, 2018, by complaining that on October 31, 2017, Mr. Worthy brought the Mask to the workplace." D.E. 74, p. 20. Further, Defendant correctly notes that the "only adverse action that occurred after June 7, 2018, is Plaintiff's October 9th [2018] termination." *Id.* Defendant, however, argues that "Plaintiff cannot show that his October 9th termination had any causal connection with the June 7th complaint." *Id.*

In response, Plaintiff argues that he "has established the causal connection by proving that Mr. Charpentier lied about the Plaintiff ever reporting Mr. Worthy's conduct to him." D.E. 85, p. 15. Further, Plaintiff asserts that he was "subject to unfair treatment with regards to creating labels on exhibits," and that "Mr. Charpentier acted in retaliation for what the Plaintiff reported to human resources that included his involvement in covering for Mr. Worthy to avoid administrative

action." *Id.* In an apparent effort to avoid summary judgment, Plaintiff cites to an email exchange in which Mr. Charpentier purportedly "blamed" Plaintiff for an "error that was led by his own recommendations." *Id.* at 16. Plaintiff also cites to the complaints he submitted to Ms. Pownall. *Id.* Finally, Plaintiff offers his time entries to show that "Plaintiff was using his PTO time while working for Mr. Charpentier." *Id.* at 20–21. Plaintiff asserts that "to avoid further being blamed for charging too many hours on a task which would then insinuate the Plaintiff takes too long to complete his work he would use his PTO hours so that he wouldn't get in 'trouble.'" *Id.* at 21.

In viewing the evidence and all factual inferences in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to discharge his burden to establish a causal connection between his protected activity and subsequent termination. Simply put, none of the evidence offered by Plaintiff is relevant to this inquiry. And although Plaintiff engaged in protected activity on June 7, 2018 and was subsequently terminated on October 9, 2018, this four-month period, by itself, does "not allow a reasonable inference of a causal relation between the protected expression and the adverse action." *See Higdon*, 393 F.3d at 1221; *see also Joseph v. Napolitano*, 839 F. Supp. 2d 1324, 1339-40 (S.D. Fla. 2012). Therefore, a causal connection cannot be inferred by the temporal proximity of the events in this case, and Plaintiff's retaliation claim fails because he does not present any record evidence of causation.

Given that Plaintiff has failed to create a genuine issue of material fact as to whether there was a causal connection between his protected activity and termination, Defendant is entitled to summary judgment on Plaintiff's retaliation claim.

## V. Conclusion

For the foregoing reasons, it is hereby

ORDERED AND ADJUGED that Defendant's Summary Judgment Motion (D.E. 74) is GRANTED. The Court will enter a separate final judgment. It is further

ORDERED AND ADJUGED that the Clerk of Court shall administratively close this case. All future hearings and deadlines are CANCELLED, and all pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers, Miami, Florida, this _14th_ day of August, 2020.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

Copies furnished:
All counsel of record

# EXHIBIT “B”

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 20-13422
Non-Argument Calendar

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D.C. Docket No. 1:19-cv-23708-UU

JOE PYATT,

Plaintiff-Appellant,

versus

AECOM TECHNICAL SERVICES, INC.,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Florida

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(September 13, 2021)

Before JORDAN, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Joe Pyatt, proceeding *pro se*, appeals the district court's order granting AECOM Technical Services' motion for summary judgment in his employment discrimination suit under the Florida Civil Rights Act. Mr. Pyatt also appeals the denial of his motion to extend discovery. After careful review of the parties' briefs and the record, we affirm.

## I

### A

On July 7, 2017, AECOM hired Mr. Pyatt for an entry-level position after a referral from one of its employees, Samuel Worthy, who met Mr. Pyatt at a college fair. Mr. Worthy subsequently raised concerns about Mr. Pyatt turning in unacceptable work product, failing to follow instructions, having problems accepting and implementing feedback, and disregarding instructions. He relayed these concerns to their supervisor, Gorky Charpentier, in emails dating from March through April of 2018. On May 7, 2018, at a performance review, managers and administrators at AECOM handed Mr. Pyatt a performance improvement plan ("PIP") addressing his performance and behavior issues.

On June 6, 2018, at another performance review, Mr. Pyatt was "belligerent and argumentative" to his supervisor, Mr. Charpentier. The next day, Mr. Pyatt sent an email to AECOM's human resources department stating that on October 31, 2017—Halloween of the previous year—Mr. Worthy had brought a black mask to

work that Mr. Pyatt considered to be "a notorious representation of black face which is used to mock African Americans." A member of AECOM's employee relations and compliance group, Teresa Pownall, was assigned to investigate the mask incident and found no evidence of discrimination.

Mr. Pyatt's poor work performance continued, and Mr. Charpentier discussed it with him. Mr. Pyatt then sent an email to Ms. Pownall reporting Mr. Charpentier for "unethical behavior." Ms. Pownall once again investigated the incident but found no evidence to substantiate Mr. Pyatt's claim of unethical behavior. On September 11, 2018, Ms. Pownall spoke with Mr. Pyatt, who informed her that he had been working with a different project manager. He described work as calm and claimed things were on a "corrective measure."

On October 1, 2018, Mr. Pyatt had car trouble after leaving work. He asked the security guard to use the phone to call for assistance. Mr. Pyatt waited in the lobby and was seen slouching by the security guard who approached him and informed him he could not sleep there. Mr. Pyatt asserts that the security guard threatened to call the police on him.

Witnesses explained that Mr. Pyatt was yelling and acting aggressive towards the security guard. Ms. Pownall's investigation revealed that a witness advised security personnel at the building next door to contact 911 "due to security and safety concerns." As a result of Ms. Pownall's investigation, Carlos Garcia, AECOM's

Vice President, Florida Transportation State Lead, telephoned Mr. Pyatt on October 9, 2018, and terminated his employment. Neither Mr. Charpentier nor Mr. Worthy participated in the decision to terminate Mr. Pyatt.

**B**

Mr. Pyatt filed an action in Florida state court in January of 2019 asserting claims for race discrimination and retaliation against AECOM. AECOM removed the case from state court to federal court based on diversity jurisdiction under 28 U.S.C. § 1332. On November 12, 2019, Mr. Pyatt filed a second amended complaint in the district court adding two counts to his original claims.[1]

In the parties' joint scheduling report, Mr. Pyatt sought to limit the time to respond to interrogatories and requests for admission to two weeks and proposed a trial date in April of 2020. AECOM proposed that trial be held later, in September of 2020. In December of 2019, the district court issued a scheduling order providing that all discovery must be completed by April 3, 2020, and setting trial for July of 2020. The order provided that "[t]o the extent this Order conflicts with the Local Rules, this order supersedes them." The time allotted for discovery fell between the

[1] The only relevant claim on appeal is Mr. Pyatt's race discrimination claim as set forth in Count One. Mr. Pyatt also alleged retaliation (Count Two), harassment and a hostile work environment (Count Three), and wrongful termination (Count Four). The district court dismissed Counts Three and Four with prejudice, and it granted summary judgment to AECOM on Count Two. On appeal, Mr. Pyatt does not challenge these rulings. Accordingly, any issues relating to Counts Two, Three, and Four are abandoned. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014).

"standard" and "express" tracks set out in the Local Rules and did not specify whether the case had been assigned to either track.

On March 2, 2020, Mr. Pyatt filed his first motion to extend discovery, arguing that he was still collecting documents, was forced to change his strategy, and would need to subpoena additional witnesses. In a paperless order, the district court denied that motion. It ordered the parties to appear before a magistrate judge for a discovery conference to resolve any outstanding discovery issues. That conference took place in March of 2020.

On April 14, 2020, Mr. Pyatt filed a second motion to extend discovery arguing that discovery was not complete and that he needed to submit additional discovery requests to prove key material facts in his case. The district court denied the motion, concluding that Mr. Pyatt's arguments did not establish good cause to warrant a delay.

AECOM moved for summary judgment, asserting that Mr. Pyatt could not establish a *prima facie* case of race discrimination or demonstrate pretext. In support, AECOM submitted declarations by Mr. Garcia, Mr. Worthy, Mr. Charpentier, and Ms. Pownall as well as a statement of undisputed material facts. First, AECOM argued that it fired Mr. Pyatt for his poor performance and his altercation with a building security guard, both of which were justified. Mr. Pyatt's argument that AECOM's criticism of his job performance constituted an adverse

employment action was insufficient to support a discrimination claim, and Mr. Pyatt could not identify a similarly situated non-African-American employee who was not terminated for engaging in an altercation. Second, AECOM argued that the only evidence of alleged discrimination that Mr. Pyatt identified was that Mr. Worthy brought a black Halloween mask to the office. Moreover, it noted that Mr. Pyatt conceded that Mr. Garcia, not Mr. Worthy, fired him, and there was no evidence of any discriminatory animus by Mr. Garcia.

Mr. Pyatt opposed the motion, responding that he brought forth substantial evidence to prove his claim and to demonstrate that he was treated differently than other employees with regards to using paid time off when not given any work. He attached several exhibits, including company emails and memoranda, a summary of audio recordings, discovery requests and responses, and pages from his deposition.

In a deposition, an AECOM employee stated that he came to the office frequently on weekends and could charge overtime if it was work-related. The employee also said that he saw Mr. Pyatt at the office on weekends several times. Mr. Pyatt referred to "material facts" but did not respond to AECOM's statement of undisputed material facts or submit a statement of his own. He referenced audio recordings which were not provided to the district court.

The district court granted AECOM's motion. It concluded that (1) Mr. Pyatt failed to establish that he was treated less favorably than a similarly situated

individual outside his protected class; (2) AECOM presented legitimate, nondiscriminatory reasons supported by unrefuted evidence for terminating him; and (3) Mr. Pyatt failed to establish that those reasons were merely pretext for racial discrimination.

## II

We review a district court's application of its local rules for abuse of discretion. *See Reese v. Herbert*, 527 F.3d 1253, 1267 n.22 (11th Cir. 2008). In doing so, we give "great deference to a district court's interpretation" of its rules. *See Clark v. Hous. Auth. of Alma*, 971 F.2d 723, 727 (11th Cir. 1992).

We review a district court's denial of a motion to extend discovery for an abuse of discretion. *See Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1306 (11th Cir. 2011). Generally, we review *pro se* pleadings liberally. Nevertheless, a district court's discovery rulings "will not be overturned unless it is shown that they resulted in substantial harm to the appellant's case." *Id.* at 1307 (citation and internal quotation marks omitted). *See also Harrison v. Culliver*, 746 F.3d 1288, 1296–97 (11th Cir. 2014) (stating that a party must show, "beyond conclusory assertions, how the court's ruling resulted in substantial harm to his case") (citation and internal quotation marks omitted).

We review *de novo* a district court's decision to grant summary judgment. *See Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1263 (11th Cir. 2010). The question

is whether the evidence, when viewed in the light most favorable to the nonmoving party, shows that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *See id.* at 1263–64.

**III**

Under Federal Rule of Civil Procedure 16(b), the district court must issue a scheduling order that limits the time to complete discovery. *See* Fed. R. Civ. P. 16(b)(3). Local Rule 16.1 for the Southern District of Florida governs pretrial procedure in civil actions and provides for three case management tracks: expedited, standard, and complex. *See* S.D. Fla. L.R. 16.1(a)(2). The expedited track, for non-complex cases that can be tried in one to three days, provides that discovery shall be completed between 90 to 179 days from the scheduling order. *See* S.D. Fla. L.R. 16.1(a)(2)(A). The standard track case, for cases requiring three to ten days of trial, provides for discovery to be completed within 180 to 269 days. *See* S.D. Fla. L.R. 16.1(a)(2)(B). Local Rule 16.1 states that, in determining which track to assign a case, the court will consider certain factors, including "the complexity of the case, [the] number of parties, [the] number of expert witnesses, [the] volume of evidence, [any] problems locating or preserving evidence, [the] time estimated by the parties for discovery and [the] time reasonably required for trial, among other factors." S.D. Fla. L.R. 16.1(a)(3).

Mr. Pyatt argues, for the first time on appeal, that the district court incorrectly applied Local Rule 16.1(a)(2)(B) when issuing the scheduling order. Mr. Pyatt states that he was entitled to 180 to 269 days to complete discovery from the date of the December 2019 scheduling order under Local Rule 16.1(a)(2)(B).

AECOM responds that Mr. Pyatt never raised this argument before the district court and, thus, has forfeited it. Moreover, it asserts that Mr. Pyatt invited the alleged error because he asked for a shorter period for discovery. Substantively, AECOM contends that the district court properly applied Local Rule 16.1.

Because Mr. Pyatt raises this issue for the first time on appeal, he has forfeited it. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1330–31 (11th Cir. 2004). In any event, when the district court set the discovery deadline for April 3, 2020, it correctly considered the parties' joint planning and scheduling report, including Mr. Pyatt's specific request that the court shorten the discovery period and schedule trial for April of 2020. Therefore, even if the issue were not forfeited, Mr. Pyatt failed to explain how the district court abused its discretion.

## IV

Under Federal Rule of Civil Procedure 16, the district court's scheduling order "may be modified *only* for good cause *and* with the judge's consent." Fed. R. Civ. P. 16(b)(4) (emphasis added). To establish good cause, a party seeking an extension of a scheduling order must establish that it was unable to meet the applicable

deadlines "despite due diligence;" otherwise, modification is precluded. *See Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998). "[W]e have often held that a district court's decision to hold litigants to the clear terms of its scheduling orders is not an abuse of discretion." *Josendis*, 662 F.3d at 1307 ("[T]hough the court had the authority to grant a *post hoc* extension of the discovery deadline for good cause, it was under no obligation to do so."). *See also Bearint ex rel. Bearint v. Dorell Juv. Grp., Inc.*, 389 F.3d 1339, 1348–49 (11th Cir.2004) (upholding a district court's decision to exclude an expert report disclosed after the deadline expired for submission). We construe *pro se* pleadings liberally, but nevertheless require *pro se* parties to follow procedural rules. *See Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007).

Mr. Pyatt argues that the court erred in denying his second motion to extend discovery because he did not have 14 months to complete discovery, as his case was not removed to federal court until September of 2019, and he was unable to enforce the Federal Rules of Civil Procedure or subpoena out-of-state witnesses prior to that date. Mr. Pyatt asserts that limiting the discovery period also violated his Fourteenth Amendment right to due process. He contends that the district court should have applied a proportionality standard in the discovery process and considered that the cost of discovery to AECOM was negligible because the documents were easily accessible to it.

AECOM responds that the district court did not abuse its discretion in denying both requests for extensions of the scheduling order. It argues that Mr. Pyatt did not provide any good cause or valid reason for why he failed to complete discovery during the 14-month discovery period. AECOM contends that Mr. Pyatt never argued below that he could not enforce the Federal Rules of Civil Procedure prior to removal or that the state court did not have jurisdiction to subject out-of-state witnesses to discovery, and those arguments are being raised for the first time on appeal. Further, AECOM asserts that these arguments lack merit as the Florida Rules of Civil Procedure permit discovery, and Mr. Pyatt never subpoenaed any out-of-state witnesses.

Mr. Pyatt replies that the issue is not whether the district court abused its discretion in the denial of the motions to extend discovery, but whether the procedural rules in place violate his Fourteenth Amendment right to due process. Mr. Pyatt says that he did need to subpoena out-of-state witnesses, as Ms. Pownall and the investigator assigned to his case were out-of-state.

To support his second motion to extend discovery, Mr. Pyatt argued only that the discovery necessary to prove key material facts in his case was not completed. He failed to explain, however, why he was unable to complete discovery prior to expiration of the scheduling order deadlines and did not address due diligence. *See Sosa*, 133 F.3d at 1419 (concluding that a party's lack of steps taken to acquire the

information earlier in the discovery period was a factor indicating a lack of diligence in pursuing a claim). He also failed to raise any argument about his rights under the Fourteenth Amendment until this appeal, and this argument is thus forfeited. *See Access Now*, 385 F.3d at 1330.

Even if Mr. Pyatt had established good cause, the decision to modify a final scheduling order was ultimately at the discretion of the district court. *See Josendis*, 662 F.3d at 1307. Since Mr. Pyatt failed to show good cause for the extension, the district court did not err when it denied Mr. Pyatt's second motion to extend discovery. *See id.*

**V**

A motion for summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "Summary judgment is improper [i]f a reasonable fact finder could draw more than one inference from the facts, and that inference creates a genuine issue of material fact." *Holifield v. Reno*, 115 F.3d 1555, 1561 (11th Cir. 1997) (citation and internal quotation omitted).

Under the Florida Civil Rights Act, an employer may not discriminate based on race, color, religion, sex, national origin, age, handicap, or marital status. *See*

Fla. Stat. §§ 760.01(b), 760.10. "Because the FCRA is modeled on Title VII, Florida courts apply Title VII caselaw when they interpret the FCRA." *Jones v. United Space All., LLC*, 494 F.3d 1306, 1310 (11th Cir. 2007). When a plaintiff relies on circumstantial rather than direct evidence to establish discrimination, we generally apply the burden-shifting framework articulated in *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973). *See Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 798 (11th Cir. 2000).

Under the *McDonnell Douglas* framework, the plaintiff bears the burden of establishing a *prima facie* case of discrimination by showing that (1) he belongs to a protected class, (2) he was subjected to an adverse employment action, (3) he was qualified to perform the job in question, and (4) his employer treated similarly situated employees outside of the class more favorably. *See Lewis v. City of Union City*, 918 F.3d 1213, 1220–21 (11th Cir. 2019) (en banc); *Rice-Lamar v. City of Fort Lauderdale*, 232 F.3d 836, 842–43 (11th Cir. 2000). To satisfy the fourth prong, the plaintiff must establish that a comparator is "similarly situated in all material respects," such that, objectively, the plaintiff and comparator "cannot reasonably be distinguished." *Lewis*, 918 F.3d at 1218, 1227–28 (internal quotations omitted). A similarly situated comparator will ordinarily have engaged in the same basic misconduct as the plaintiff, been subject to the same employment policy, guideline, or rule, shared the same supervisor, and shared the plaintiff's employment or

disciplinary history. *See id.* (noting, however, that a discrepancy between formal job titles is generally unnecessary).

If the plaintiff establishes a *prima facie* case, "the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its actions." *Id.* at 1221. If the defendant carries that burden, the burden shifts back to the plaintiff to demonstrate that "the defendant's proffered reason was merely a pretext for unlawful discrimination." *Id.* at 1220–21 (internal quotations omitted) (citing *Holifield*, 115 F.3d at 1561–62).

Here, Mr. Pyatt failed to establish a *prima facie* case of race discrimination. Specifically, Mr. Pyatt did not present evidence to show (or permit a jury to find) that other similarly situated employees were treated differently by AECOM. *See id.* at 1221. Mr. Pyatt does not advance any evidence, nor could we find any in the record, to suggest that other AECOM employees had aggressive incidents at the office and were not terminated. Hence, under the *McDonnell Douglas* framework, Mr. Pyatt cannot satisfy the first prong of the *prima facie* standard, and we affirm the district court's grant of summary judgment on this ground. *See McDonnell Douglas Corp.* 411 U.S. at 803.

## VI

We affirm the district court's denial of Mr. Pyatt's second motion to extend discovery and grant of summary judgment in favor of AECOM.

**AFFIRMED.**