UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2279

ANTHONY JAMES BRAXTON,

Plaintiff - Appellant,

v.

LARRY E. HARRAH, Fayette County Prosecutor, in his Personal and Job Capacity; BRIAN PARSONS, Fayette County Prosecutor, in his Personal and Job Capacity; W. R. CALLISON, Drug Unit Member, in his personal capacity; DETECTIVE C. A. YOUNG, Oak Hill City Police Officer, in his Personal Capacity,

Defendants - Appellees,

WEST VIRGINIA STATE POLICE, in their official capacity; CENTRAL WEST VIRGINIA DRUG TASK FORCE CORPORATION; LEONARD BRICKFORD, Fayette County Magistrate, in his Personal and Job Capacity; MIKE FRIDLEY, Fayette County Sheriff, in his Personal and Job Capacity; STEVE KESSLER, (Estate), former Sheriff of Fayette County, in his personal and Job Capacity; OAK HILL CITY POLICE DEPARTMENT, in its official capacity; FAYETTE COUNTY COMMISSION; FAYETTEVILLE CITY POLICE DEPARTMENT; CITY OF OAK HILL, WEST VIRGINIA, in their Official Capacity; CITY OF FAYETTEVILLE, WEST VIRGINIA, in their Official Capacity; MOUNT HOPE CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF MOUNT HOPE, in their Official Capacity; ANSTED CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF ANSTED, in their official capacity; GAULEY BRIDGE CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF GAULEY BRIDGE, in their Official Capacity; NICHOLAS COUNTY COMMISSION, in their Official Capacity; NICHOLAS COUNTY SHERIFF DEPARTMENT, in their official capacity; SUMMERSVILLE CITY POLICE DEPARTMENT, in their official capacity; CITY OF SUMMERSVILLE, WEST VIRGINIA, in their official capacity; RICHWOOD CITY POLICE DEPARTMENT, in their official capacity; CITY OF RICHWOOD, in their official capacity; CLAY COUNTY COMMISSION, in their official capacity; CLAY COUNTY SHERIFF DEPARTMENT, the Police in their Official Capacity;

WEBSTER COUNTY COMMISSION, in their official capacity; WEBSTER COUNTY SHERIFF DEPARTMENT, in their Official Capacity; CITY OF WEBSTER SPRING, WEST VIRGINIA, in their Official Capacity; WEBSTER SPRING CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF COWEN, WEST VIRGINIA; POCAHONTAS COUNTY COMMISSION, in their official capacity; POCAHONTAS COUNTY SHERIFF DEPARTMENT, in their Official Capacity; MARLINTON CITY POLICE DEPARTMENT, in their official capacity; CITY OF MARLINTON, WEST VIRGINIA, in their official capacity,

Defendants.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Thomas E. Johnston, Chief District Judge. (2:18-cv-00585)

Submitted: May 22, 2023 Decided: June 7, 2023

Before NIEMEYER and HEYTENS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Anthony James Braxton, Appellant Pro Se. John P. Fuller, Adam Ketner Strider, BAILEY & WYANT, PLLC, Charleston, West Virginia; Jared Coy Underwood, Chip Edward Williams, PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC, Charleston, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony James Braxton appeals the district court's orders accepting the recommendations of the magistrate judge, denying relief on Braxton's 42 U.S.C. § 1983 complaint, and denying his motions.* We have reviewed the record and find no reversible error. Accordingly, we deny the pending motions and affirm the district court's orders. *See Braxton v. Harrah*, No. 2:18-cv-00585 (S.D.W. Va. Oct. 15, 2021; Aug. 12, 2021; Mar. 27, 2020). 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

* Appellees have moved to dismiss part of the appeal as untimely filed. (ECF Nos. 12, 18). Braxton opposes the motion. (ECF No. 21). Appellees contend the district court's August 12, 2021, order granting summary judgment to some Defendants and referring the case to the magistrate judge for any remaining proceedings was a final order; and Braxton's notice of appeal filed on November 10, 2021, was untimely filed as to that order. Appellees do not dispute that the notice of appeal was timely filed as to the October 15, 2021, order denying Braxton's pending motions and dismissing the action with prejudice. But, even assuming the August 12, 2021, order was a final order, it was not set forth on a separate document; and the time to appeal did not begin to run. *See* Fed. R. App. P. 4(a)(7)(A)(ii).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

ANTHONY JAMES BRAXTON,

Plaintiff,

v. CIVIL ACTION NO. 2:18-cv-00585

LARRY E. HARRAH, et al.,

Defendants.

ORDER

Pending before the Court are seven motions: (1) Plaintiff's Motion to Reinstate Fayette County Commission, (ECF No. 166); (2) Motion to Amend Plaintiff's Declaration for Defendant W.R. Callison, (ECF No. 168); (3) Plaintiff's Motion for Assistance of Counsel, (ECF No. 169); (4) Plaintiff's Motion for Extension of Discovery, (ECF No. 170); (5) Motion for Judge Dwane L. Tinsley to Recuse Himself, (ECF No. 171); (6) Plaintiff's Motion to Add Fayette County Indictment 18-F-18 into Evidence, (ECF No. 174); and (7) Motion for Judge Dwane L. Tinsley to Recuse Himself, (ECF No. 182) (collectively, "Plaintiff's Pending Motions"), which the Court has construed as motions for specific relief.[1]

On March 18, 2021, Magistrate Judge Dwane L. Tinsley entered his Proposed Findings & Recommendations ("PF&R"), in which he recommended that the Defendants' motions for summary judgement, (ECF Nos. 151, 153) be granted in their entirety and Plaintiff's two pending

[1] It is noted that the first five motions, (ECF Nos. 166-171), were filed on April 5, 2021, the Motion to Add Fayette County Indictment 18-F-18 into Evidence, (ECF No. 174), was filed on April 27, 2021, and the additional motion requesting Magistrate Judge Tinsley to recuse himself, (ECF No. 182), was filed on August 20, 2021.

motions, (ECF Nos. 156, 157), be denied. (ECF No. 165). Following the entry of the PF&R, Plaintiff filed the first six of Plaintiff's Pending Motions, (ECF Nos. 166, 168, 169, 170, 171, 174). On August 12, 2021, Senior Judge John T. Copenhaver, Jr. entered a Memorandum Opinion and Order on this matter, which adopted Magistrate Judge Tinsley's PF&R, overruled Plaintiff's objections, and granted Defendants' motions for summary judgment. (*See* ECF No. 177.) Shortly after entry of this order, Plaintiff filed the seventh of Plaintiff's Pending Motions. (ECF No. 182.) This matter was subsequently reassigned to the undersigned District Judge and to Magistrate Judge Aboulhosn. (ECF Nos. 185, 186).

As this case was transferred to Chief Judge Thomas E. Johnston and Magistrate Judge Omar J. Aboulhosn, (ECF Nos. 185, 186), Plaintiff's two separate motions for Magistrate Judge Tinsley to recuse himself, (ECF Nos. 171, 182), are **DENIED AS MOOT**. The Court also emphasizes the frivolity and lack of merit to Plaintiff's accusations toward Magistrate Judge Tinsley and Judge Copenhaver therein. Further, the four remaining motions, (ECF No. 166, 169, 170, 174), were all filed after the entry of the PF&R, (ECF No. 165), and before the entry of the order adopting the PF&R, (ECF No. 177). Thus, these remaining motions are **DENIED AS MOOT**, as all Plaintiff's claims were dismissed upon the entry of the order granting the Defendants' motions for summary judgment, (ECF No. 177).

Accordingly, the Court **DENIES AS MOOT** Plaintiff's Pending Motions in this matter, (ECF Nos. 166, 168, 169, 170, 171, 174, 182), and **DISMISSES** this action **WITH PREJUDICE**. The Clerk is **DIRECTED** to remove this action from the Court's active docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 15, 2021

THOMAS E. JOHNSTON, CHIEF JUDGE

FILED: August 14, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2279
(2:18-cv-00585)

ANTHONY JAMES BRAXTON

Plaintiff - Appellant

v.

LARRY E. HARRAH, Fayette County Prosecutor, in his Personal and Job Capacity; BRIAN PARSONS, Fayette County Prosecutor, in his Personal and Job Capacity; W. R. CALLISON, Drug Unit Member, in his personal capacity; DETECTIVE C. A. YOUNG, Oak Hill City Police Officer, in his Personal Capacity

Defendants - Appellees

and

WEST VIRGINIA STATE POLICE, in their official capacity; CENTRAL WEST VIRGINIA DRUG TASK FORCE CORPORATION; LEONARD BRICKFORD, Fayette County Magistrate, in his Personal and Job Capacity; MIKE FRIDLEY, Fayette County Sheriff, in his Personal and Job Capacity; STEVE KESSLER, (Estate), former Sheriff of Fayette County, in his personal and Job Capacity; OAK HILL CITY POLICE DEPARTMENT, in its official capacity; FAYETTE COUNTY COMMISSION; FAYETTEVILLE CITY POLICE DEPARTMENT; CITY OF OAK HILL, WEST VIRGINIA, in their Official Capacity; CITY OF FAYETTEVILLE, WEST VIRGINIA, in their Official Capacity; MOUNT HOPE CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF MOUNT HOPE, in their Official Capacity; ANSTED CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF ANSTED, in their official capacity; GAULEY BRIDGE CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF GAULEY BRIDGE, in their Official Capacity; NICHOLAS COUNTY

COMMISSION, in their Official Capacity; NICHOLAS COUNTY SHERIFF DEPARTMENT, in their official capacity; SUMMERSVILLE CITY POLICE DEPARTMENT, in their official capacity; CITY OF SUMMERSVILLE, WEST VIRGINIA, in their official capacity; RICHWOOD CITY POLICE DEPARTMENT, in their official capacity; CITY OF RICHWOOD, in their official capacity; CLAY COUNTY COMMISSION, in their official capacity; CLAY COUNTY SHERIFF DEPARTMENT, the Police in their Official Capacity; WEBSTER COUNTY COMMISSION, in their official capacity; WEBSTER COUNTY SHERIFF DEPARTMENT, in their Official Capacity; CITY OF WEBSTER SPRING, WEST VIRGINIA, in their Official Capacity; WEBSTER SPRING CITY POLICE DEPARTMENT, in their Official Capacity; CITY OF COWEN, WEST VIRGINIA; POCAHONTAS COUNTY COMMISSION, in their official capacity; POCAHONTAS COUNTY SHERIFF DEPARTMENT, in their Official Capacity; MARLINTON CITY POLICE DEPARTMENT, in their official capacity; CITY OF MARLINTON, WEST VIRGINIA, in their official capacity

Defendants

ORDER

Upon consideration of submissions relative to the motion for reconsideration and motion to dismiss defendants, the court denies the motions.

Entered at the direction of the panel: Judge Niemeyer, Judge Heytens, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

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