

**UNPUBLISHED**

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

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**No. 23-6609**

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**ALBERT ANDERSON,**

Plaintiff - Appellant,

v.

WINSTON SALEM POLICE DEPARTMENT, Sued in official capacity; BOBBY F. KIMBROUGH, Chief of sheriff sued in individual and official capacity; CATRINA AMELIA THOMPSON, Chief of police sued in individual and official capacity; CITY OF WINSTON SALEM, Sued in official capacity; C. J. REYNOLDS, Winston salem police department sued in individual capacity; D. L. WYLIE, Winston salem police department sued in individual capacity; HOLLINGSWORTH, Deputy sheriff's office sued in individual capacity; B. B. JONES, Deputy sheriff's office sued in individual capacity; B. A. FAISON-WALDEN, Deputy sheriff's sued in individual capacity; E. L. RIVERA-CORREA, Sheriffs office sued in individual capacity; T. CURRY, Sheriff office sued in individual capacity; SUZANNE CURRY, -K9 being sued in both; MAGISTRATE RIVERA, Being sued in both; SHERIFF'S DEPARTMENT, Being sued in official capacity; DEFENDER DISTRICT 21, Office of the public defender sued in official capacity; BRIAN C. SHILLITO, Assistant public defender sued in individual capacity; FORSYTH COUNTY DETENTION CENTER, Being sued in official capacity; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Being sued in official capacity; PAUL MARSHALL JAMES, III, Chief public defender being sued in both,

Defendants - Appellees.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:23-cv-00264-WO-LPA)

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Submitted: April 30, 2024

Decided: May 22, 2024

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Before NIEMEYER and KING, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Albert Anderson, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Albert Anderson appeals the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice Anderson's 42 U.S.C. § 1983 action. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Anderson v. Winston Salem Police Dep't*, No. 1:23-cv-00264-WO-LPA (M.D.N.C. May 10, 2023). We deny Anderson's motion for general relief. 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*

FILED: May 22, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 23-6609  
(1:23-cv-00264-WO-LPA)

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ALBERT ANDERSON

Plaintiff - Appellant

v.

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J U D G M E N T

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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/ NWAMAKA ANOWI, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALBERT MARQUAVIOUSLAMAR  
ANDERSON,

Plaintiff,

v.

1:23-cv-264

WINSTON SALEM POLICE  
DEPARTMENT, et al.,

Defendants.

**ORDER**

This matter is before the court for review of the Order and Recommendation filed on April 13, 2023, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b), (Doc. 3), as well as for rulings on the "Motion for Protective Order," (Doc. 5), the "Motion for Court Order," (Doc. 6), and the "Motion for Temporary Restraining Order Injunction Relief," (Doc. 7), filed by Plaintiff. In the Recommendation, the Magistrate Judge recommends that the Complaint should be filed and dismissed sua sponte without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects cited in the Recommendation. (Doc. 3.) Plaintiff filed Objections to the Recommendation. (Doc. 8.)

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified

proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge . . . . or recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the Recommendation as well as Plaintiff's Objections and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation. This court has also reviewed Plaintiff's Motions, which seek, inter alia, (i) relief associated with Plaintiff's "Motion for Existence of Insanity" in an earlier lawsuit, (Doc. 8 at 1), (ii) an order prohibiting the use of an ankle monitor upon Plaintiff's impending release from imprisonment, and (iii) expungement of Plaintiff's entire criminal record, so that he obtains "a clean rap sheet," (Doc. 7 at 3). (See Docs. 5-7.) Having fully considered the Motions, and given the disposition of Plaintiff's Complaint, this court determines that the Motions should be denied.

**IT IS THEREFORE ORDERED** that the Magistrate Judge's Recommendation, (Doc. 3), is **ADOPTED**. **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects cited in the Recommendation, and that Plaintiff's Motion

for Protective Order, (Doc. 5), Motion for Court Order, (Doc. 6), and Motion for Temporary Restraining Order Injunction Relief, (Doc. 7), are **DENIED**. A judgment dismissing this action will be entered contemporaneously with this Order.

This the 10th day of May, 2023.

William L. Ostin, Jr.  
United States District Judge



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALBERT MARQUAVIOUSLAMAR  
ANDERSON,

Plaintiff,

v.

WINSTON SALEM POLICE  
DEPARTMENT, et al.,

Defendants.

1:23-cv-264

**JUDGMENT**

For the reasons set forth in the Order filed contemporaneously  
with this Judgment,

**IT IS THEREFORE ORDERED AND ADJUDGED** that this action is  
**DISMISSED** without prejudice to Plaintiff filing a new complaint,  
on the proper § 1983 forms, which corrects the defects cited in  
the Recommendation, and that Plaintiff's Motion for Protective  
Order, (Doc. 5), Motion for Court Order, (Doc. 6), and Motion  
for Temporary Restraining Order Injunction Relief, (Doc. 7), are  
**DENIED**.

This the 10th day of May, 2023.

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALBERT MARQUAVIOUSLAMAR )  
ANDERSON, )

Plaintiff, )

v. )

1:23CV264

WINSTON-SALEM POLICE DEPT., )  
et al, )

Defendant(s). )

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*.

The form of the Complaint is such that a serious flaw makes it impossible to further process the Complaint. The problem is:

1. Plaintiff's claims are confused and unclear in many respects. For instance, the Complaint bases some claims on alleged breaches of the North Carolina Constitution or various state or local laws and policies. However, claims under § 1983 must be based on allegations involving violations of the United States Constitution or federal statutes, not state or local law or policy. It also appears that Plaintiff seeks to hold a number of Defendants liable based on their positions as supervisors, but theories of *respondeat superior* or liability predicated solely on a defendant's identity as a supervisor do not exist under § 1983. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009). The Complaint additionally names as Defendants a building which is not a person and therefore not a proper Defendant under § 1983, a state court magistrate who is immune from suit, see Stump v. Sparkman, 435 U.S. 349 (1978), and Plaintiff's former public defender who is not a state actor who can be sued under § 1983, see Polk County v. Dodson, 454 U.S. 312, 324 (1981). It also names the Equal Employment Opportunity Commission even though the

lawsuit is in no way connected to Plaintiff's employment or to any employment issue. Further, most of Plaintiff's claims also appear to undermine his criminal convictions for speeding to elude arrest, possessing drug paraphernalia, and resisting an officer. He cannot raise such claims in a suit under § 1983 without first showing that such convictions were reversed on direct appeal, expunged by Executive Order, declared invalid by a state tribunal, or, finally, called into question by a federal court through the issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiff makes no such showing and, in fact, the records of the North Carolina Department of Public Safety reflect that he is still incarcerated for those convictions. Finally, the Complaint frequently uses flowery language to state legal conclusions, but contains no basic facts supporting those conclusions. Plaintiff must make his claims clear, name proper Defendants, base his claims on allegations of intentional violations of his federal rights, provide the facts supporting each claim, and state in plain language how each Defendant allegedly violated his rights.

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper forms, which corrects the defects of the present Complaint. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

*In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper 42 U.S.C. § 1983 forms, which corrects the defects cited above.

This, the 13th day of April, 2023.

/s/ L. Patrick Auld  
**L. Patrick Auld**  
**United States Magistrate Judge**

FILED: June 13, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 23-6609  
(1:23-cv-00264-WO-LPA)

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ALBERT ANDERSON

Plaintiff - Appellant

v.

WINSTON SALEM POLICE DEPARTMENT, Sued in official capacity; BOBBY F. KIMBROUGH, Chief of sheriff sued in individual and official capacity; CATRINA AMELIA THOMPSON, Chief of police sued in individual and official capacity; CITY OF WINSTON SALEM, Sued in official capacity; C. J. REYNOLDS, Winston salem police department sued in individual capacity; D. L. WYLIE, Winston salem police department sued in individual capacity; HOLLINGSWORTH, Deputy sheriff's office sued in individual capacity; B. B. JONES, Deputy sheriff's office sued in individual capacity; B. A. FAISON-WALDEN, Deputy sheriff's sued in individual capacity; E. L. RIVERA-CORREA, Sheriffs office sued in individual capacity; T. CURRY, Sheriff office sued in individual capacity; SUZANNE CURRY, -K9 being sued in both; MAGISTRATE RIVERA, Being sued in both; SHERIFF'S DEPARTMENT, Being sued in official capacity; DEFENDER DISTRICT 21, Office of the public defender sued in official capacity; BRIAN C. SHILLITO, Assistant public defender sued in individual capacity; FORSYTH COUNTY DETENTION CENTER, Being sued in official capacity; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Being sued in official capacity; PAUL MARSHALL JAMES, III, Chief public defender being sued in both

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M A N D A T E

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The judgment of this court, entered May 22, 2024, 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/Nwamaka Anowi, Clerk

FILED: July 2, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 23-6609  
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ALBERT ANDERSON

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Defendants – Appellees

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ORDER

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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 Niemeyer, Judge King, and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk



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