

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7523
(7:18-cv-00029-JPJ-PMS)

DAVID MEYERS

Plaintiff - Appellant

v.

WALTER SWINEY, Unit Manager; D. C. STALLARD

Defendants - Appellees

and

U. S. POSTAL SERVICE; J. GIBSON; P. SYLKES; M. L. COUNTS; J. D. BENTLEY, Investigator; J. B. HALL, Sergeant; C. COMBS; OFFICER WILLIAMS; SERGEANT BOYD; D. TATE, Major; COUNTS, Hearing Officer; D. STILL, Captain; GWEN, Officer; OFFICER COLLY; FANNIN, Lieutenant; CURTIS PARR; S. ESCOFFERY; F. STANLEY; S. BLENCH; LEWIS, Officer; A. CLEVINGER; C. R. STANLEY, Lieutenant; MCCOWAN, Officer; J. FANNIN, Investigator; MARCUS ELAM, Western Regional Administrator; PAUL HAYNES, Special Investigations Unit; A. DAVID ROBINSON, Deputy Director; KAREN STAPLETON, DDM; J. B. MESSE

Defendants

O R D E R

The court dismisses this proceeding for failure to prosecute pursuant to Local Rule 45.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

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Defendants

RULE 45 MANDATE

This court's order dismissing this appeal pursuant to Local Rule 45 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

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

DAVID MEYERS,

Plaintiff,

v.

U.S. POSTAL SERVICE, ET AL.,

Defendants.

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Case No. 7:18CV00029

OPINION AND ORDER

By: James P. Jones
United States District Judge

David Meyers, Pro Se Plaintiff; Richard C. Vorhis and Ann-Marie C. White, Office of the Attorney General of Virginia, Richmond, Virginia, for Defendants.

This civil rights action under 42 U.S.C. § 1983, filed pro se by Virginia inmate David Meyers, alleged a multitude of claims against more than two dozen prison officials, concerning events at Red Onion State Prison in 2017 and 2018. All claims but one have been previously dismissed. The remaining claim is for injunctive relief, based on his contention that correctional officers Swiney and Stallard were not protecting him from an excessive risk that fellow inmates Thomas and Runren would carry out their threats to rape or kill Meyers in his protective custody cell, given his inability to stand or walk. I also found that Meyers has three “strikes” under 28 U.S.C. § 1915(g), and as such that he is eligible to proceed without prepayment of the filing fee for this case only if he shows that at the time he filed this Complaint, he was in imminent danger of

serious physical harm. Compl. 2. I referred his remaining claim to the magistrate judge for further proceedings on that issue.

United States Magistrate Judge Pamela Meade Sargent conducted an evidentiary hearing on August 16 and 24, 2018. She has issued a Report and Recommendation that summarizes the testimony and other evidence presented to her. The Report recommends a finding that for purposes of the exception in § 1915(g), Meyers has shown that at the time he filed his Complaint, he was in imminent danger of serious physical harm related to his one remaining claim against defendants Swiney and Stallard. The parties were notified of the opportunity to file objections to the Report, and the allotted time for objections has passed with none being filed.

I have reviewed Judge Sargent's Report, and I am satisfied that there is no clear error on the face of the record. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (“[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note to 1983 addition). I have also reviewed Meyers’ motions objecting to Judge Sargent’s evidentiary rulings and his motions seeking to obtain and present

additional evidence on imminent danger. I find his objections to be without merit and see no need for the additional materials he seeks.¹

For the stated reasons, it is hereby **ORDERED** as follows:

1. Meyers' evidentiary objections are **OVERRULED**, and his motions regarding additional proceedings or evidence on imminent danger are **DISMISSED** as moot;
2. The Clerk shall terminate as moot the following motions: ECF Nos. 74, 77, 78, and 83;
3. The Report and Recommendation, ECF No. 91, is **ACCEPTED** in its entirety; and
4. Meyers is **GRANTED** permission to proceed with this action without prepayment of the filing fee, pursuant to the imminent danger exception in 28 U.S.C. § 1915(g).

ENTER: November 6, 2018

/s/ James P. Jones
United States District Judge

¹ Meyers has also filed motions for summary judgment and numerous motions seeking preliminary injunctive relief, all of which I will address in a separate opinion.

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

DAVID MEYERS,)
v.)
Plaintiff,) Case No. 7:18CV00029
)
U. S. POSTAL SERVICE, ET AL.,)
Defendants.) FINAL ORDER
)
By: James P. Jones
United States District Judge

By Opinion and Order entered November 6, 2018, I dismissed as moot this prisoner civil rights action under 42 U.S.C. § 1983 and all motions pending therein. Plaintiff has now filed objections about prior orders entered in the case and an Amended Motion for Preliminary Injunction based on recent events unrelated to the defendants. Plaintiff's motions are dated November 8, 2018, after the case had been dismissed as moot. Accordingly, it is **ORDERED** that Plaintiff's objections are **OVERRULED**, and his new motion (ECF No. 99) is **DISMISSED**, as moot. Plaintiff may move to pursue these new matters in one of his other pending cases.

ENTER: November 20, 2018

/s/ James P. Jones
United States District Judge



Exhibit # 3225

VIRGINIA DEPARTMENT OF CORRECTIONS

Grievance Receipt

Exhibit #3225 Action No. 7:18CV29
Case No. 7:18CV29

866.1 A-3

DOC Location: WRSP Wallens Ridge State Prison

Report generated by Ravizee, B J

Report run on 01/23/2019 at 1:18 PM

Grievance Number: WRSP-19-INF-00239

Next Action Date: 2/7/2019 12:00 AM

On this date:	01/23/2019	I have received a statement from:
Meyers, David	1039777	Wallens Ridge State Prison of D-2-210-B
(Offender Name and DOC#)		(Filed Location and Housing)
Setting out the following complaint:		
state all sergeants and lieutenants refuse to give you informal complaints to file complaints on gang members and inmates in ABC&D buildings of WRSP making death threats to murder you for being an FBI informant. Counselor Caughron and Counselor Young refuse to reassign you to protective custody at DWCC for your safety.		
 (Signature)	 (Title)	