

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

**TERRY LEE ANDERSON,** )

**Plaintiff,** )

**v.** )

**SERGEANT JAMES Q. SEALEY, et** )  
**al.,** )

**Defendants.** )

**Civil Action Number:**

**7:17-cv-01024-AKK-JHE**

**MEMORANDUM OPINION AND ORDER**

The magistrate judge entered a report on May 23, 2019, recommending the defendants' motion for summary judgment be granted in part and denied in part. Doc. 27. Specifically, the report recommended summary judgment be: (1) granted on the official capacity claims against the defendants for monetary relief; (2) denied on the individual capacity claims against Sealey, Monk, Barr, and White for excessive force; and (3) denied on the individual capacity claims against Jemison and King for failure to protect. *Id.* The report further recommended dismissal of the plaintiff's medical, conditions of confinement, and due process claims pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. *Id.* Although the parties were advised of their right to file specific written objections within fourteen days, no one has filed objections.

Having carefully reviewed and considered *de novo* all the materials<sup>1</sup> in the court file, including the report and recommendation, the magistrate judge's report is hereby **ADOPTED** and the recommendation is **ACCEPTED**. Accordingly, the court **ORDERS** that the defendants' motion for summary judgment is **DENIED** on the individual capacity claims against Sealey, Monk, Barr, and White for excessive force and against Jemison and King for failure to protect. Finding no genuine issue of material fact and that the defendants are entitled to judgment as a matter of law as to the other claims, the court **FURTHER ORDERS** that the defendants' motion for summary judgment is **GRANTED** in all other respects.

Additionally, the court **ORDERS** that the plaintiff's claims against defendant Franklin are **DISMISSED WITHOUT PREJUDICE** for want of service of process. The court **FURTHER ORDERS** that the plaintiff's medical, conditions of confinement, and due process claims are **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failing to state a claim upon which relief may be granted.

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<sup>1</sup> In reviewing the evidence in the record, the court did not consider the impermissible legal conclusions included in six affidavits submitted by Defendants King, Barr, White, Sealey, Monk, and Jemison. *See* docs. 12-2, 12-3, 12-5, 12-6, 12-7, and 12-8 (Each affidavit identically ends with the statement “[a]t no time did I violate the constitutional rights of inmate Terry Lee Anderson.”). The Eleventh Circuit and Federal Rule of Evidence 701 prohibit a “lay person [who] is not qualified to make conclusions of law.” *See Montgomery v. Aetna Cas. & Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir. 1990) (“A witness also may not testify to the legal implications of conduct; the court must be the jury’s only source of law.”); *KW Plastics v. U.S. Can Co.*, 131 F. Supp. 2d 1265, 1273–74 (M.D. Ala. 2001) (“[Rule 701] requires that the witness perceive something firsthand and that the witness’s perception provide a truly rational basis for his or her opinion.”).

The Clerk is **DIRECTED** to serve a copy of this Memorandum Opinion and Order on the plaintiff.

**DONE** the 17th day of June, 2019.

  
**ABDUL K. KALLON**  
UNITED STATES DISTRICT JUDGE