

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CORY JAY GARRISON

PLAINTIFF

v.

Case No. 4:18-cv-00752-KGB

**SALINE COUNTY DETENTION
CENTER, et al.,**

DEFENDANTS

ORDER

Before the Court are the Proposed Findings and Recommendations submitted by United States Magistrate Judge Jerome T. Kearney (Dkt. No. 10). Plaintiff Cory Jay Garrison has not filed objections to the Proposed Findings and Recommendations, and the time to do so has passed. Mr. Garrison has, in the time since the Proposed Findings and Recommendations were filed, filed a motion to dismiss, an amended complaint, a motion for leave to proceed *in forma pauperis*, and a motion for copies (Dkt. Nos. 11, 12, 13, 14). Judge Kearney recommends dismissal of Mr. Garrison's claims for failure to state claims upon which relief may be granted (Dkt. No. 10, at 4). After careful review of the Proposed Findings and Recommendations, the Court adopts in part and declines to adopt in part the Proposed Findings and Recommendations (Dkt. No. 10).

The Court notes that Judge Kearney previously directed Mr. Garrison to file an amended complaint, as Mr. Garrison's original complaint was brought pursuant to 42 U.S.C. § 1983 and only named the Saline County Detention Facility as defendant (Dkt. No. 2, at 1). *See Ketchum v. City of West Memphis*, 974 F.2d 81, 82 (8th Cir. 1992) (holding that a police department was a division of a city government and not a separate juridicial entity). Mr. Garrison did not file an amended complaint in the time provided, and Judge Kearney therefore recommended dismissal of Mr. Garrison's claims against the Saline County Detention Facility (Dkt. No. 10). Eight days after the Proposed Findings and Recommendations were filed, the Clerk's Office docketed Mr.

Garrison's motion to dismiss in which he wrote "[p]lease dismiss my cla[i]ms." (Dkt. No. 11). More than fourteen days after the Proposed Findings and Recommendations were filed, the Clerk's Office docketed and filed an amended complaint submitted by Mr. Garrison (Dkt. Nos. 11, 12). The amended complaint indicates that Mr. Garrison executed it on December 1, 2018 (Dkt. No. 12, at 5). *See Sulik v. Taney Cty., Missouri*, 316 F.3d 813, 185 (8th Cir. 2003) (determining that "the prison mailbox rule governs the determination of when a prisoner's civil complaint has been filed."), *overruled on other grounds*, 393 F.3d 765 (8th Cir. 2005); Fed. R. Civ. P. 6(b) (addressing when time periods may be extended). The amended complaint alleges claims under 42 U.S.C. § 1983 against Sheriff Rodney Wright in his official and personal capacities (Dkt. No. 12, at 1).

The Court adopts Judge Kearney's Proposed Findings and Recommendations to the extent Judge Kearney recommends dismissing Mr. Garrison's claims against the Saline County Detention Facility, which is not a proper defendant (Dkt. No. 10). The Court declines to adopt Judge Kearney's Proposed Findings and Recommendations to the extent they recommend dismissing without prejudice this entire action (Dkt. No. 10).

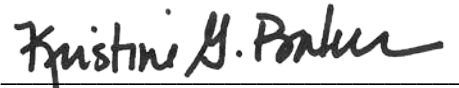
Instead, the Court directs Mr. Garrison to file within 21 days from the entry of this Order a written statement indicating whether he intends to proceed with his claims against Sheriff Rodney Wright in his official and personal capacities as alleged in his amended complaint (Dkt. No. 12, at 1). If Mr. Garrison intends to proceed with the allegations in his amended complaint, the Court requests that Judge Kearney screen the amended complaint (Dkt. No. 12) and take any other action appropriate in this proceeding.

Finally, Mr. Garrison requests copies of docket entries six (6) and eight (8) (Dkt. No. 14). The Court grants Mr. Garrison's motion for copies and directs the Clerk of Court to mail Mr. Garrison copies of the requested docket entries.

It is therefore ordered that:

1. The Court adopts in part and declines to adopt in part the Proposed Findings and Recommendations (Dkt. No. 10).
2. The Court dismisses Mr. Garrison's claims against the Saline County Detention Facility.
3. The Court directs Mr. Garrison to file within 21 days from the entry of this Order a written statement indicating whether he intends to proceed with his claims against Sheriff Rodney Wright in his official and personal capacities as alleged in his amended complaint (Dkt. No. 12, at 1).
4. The Court grants Mr. Garrison's motion for copies and directs the Clerk of Court to mail Mr. Garrison copies of the requested docket entries (Dkt. No. 14).

So ordered this the 5th day of September 2019.



Kristine G. Baker
United States District Judge