

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-23417-CIV-MOORE

PEDRO J. WESLEY,

Plaintiff,

v.

THE CITY OF MIAMI BEACH POLICE
DEPARTMENT,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss (dkt # 36).

UPON CONSIDERATION of the Motion, the Responses, the pertinent portions of the record, and being otherwise fully advised in the premises, the Court enters the following Order.

I. BACKGROUND

In his Complaint, Plaintiff Pedro J. Wesley ("Wesley") makes allegations against three Police Officers of the City of Miami Beach.¹ Plaintiff's Complaint alleges that he and two other African-American individuals were approached at gunpoint by the Officers and told that they were wearing the wrong t-shirt. At the time, Plaintiff was wearing a Barack Obama campaign t-shirt. Plaintiff further alleges that the Officers addressed Plaintiff and his associates using racial slurs and were told by the Officers that the Officers would kill them if they saw them again. Plaintiff's Complaint seeks criminal prosecution against Officers, combined with

¹ Plaintiff has recently filed 10 other cases in this District raising similar claims against a myriad of parties. Seven of those cases have been dismissed as frivolous and the remaining three have been dismissed for failure to state a claim or to abide by the Court's orders.

\$500,000,000.00. Construing a pro se litigant's claims broadly, as we must, Plaintiff's claim sounds in a cognizable civil rights claim under 42 U.S.C. § 1983. However, the portion seeking criminal prosecution against the Defendants must be dismissed because criminal prosecution is not a remedy available under § 1983. Therefore, Plaintiff has pleaded sufficient facts to support his claim.

The City of Miami Beach Police Department, however, is not an entity amenable to suit. Given that The City of Miami Beach Police Department is the only Defendant, Plaintiff's Complaint must be dismissed. Plaintiff may file an amended complaint naming a proper party or parties within 10 days of the date of this Order.

II. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss (dkt # 36) is GRANTED. The Clerk of the Court is instructed to CLOSE this case. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 16th day of September, 2009.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: All counsel of record
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