

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RAYMOND PAYTON

CIVIL ACTION

VERSUS

NO: 13-181

WRIGHT ET AL.

SECTION "J" (1)

O R D E R

The Court, having considered the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge (Rec. Doc. 6), and Plaintiff's objections thereto (Rec. Doc. 7), hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion herein.

The Magistrate Judge correctly determined that Plaintiff has failed to state a cause of action under 28 U.S.C. § 1983 against Police Superintendent Ronal Serpas. Plaintiff has affirmatively testified that Superintendent Serpas had no personal involvement in the alleged offense, and Plaintiff has failed to allege that there was a policy or custom in place that would implicate Superintendent Serpas in his official capacity. See Thompson v. Steele, 709 F.2d 381, 382 (5th Cir. 1983); Spiller v. City of Texas City, Police

Department, 130 F.3d 162, 167 (5th Cir. 1997). Thus, Superintendent Serpas must be dismissed from this suit.

Likewise, the Court agrees with the Magistrate Judge's recommendation that the case against Officer Wright should be stayed. Plaintiff's underlying criminal case has not been fully resolved, and the outcome of that trial necessarily influences the Court's capacity to grant Plaintiff his requested relief in this action. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (holding that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged [], [or otherwise declared invalid]). Accordingly;

IT IS ORDERED that Plaintiff's objections (Rec. Doc. 7) are hereby **OVERRULED**;

IT IS FURTHER ORDERED that the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Rec. Doc. 6) as its own;

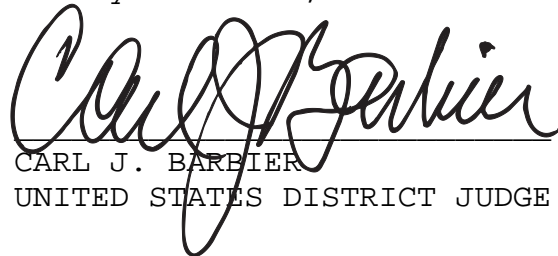
IT IS FURTHER ORDERED that Plaintiff's claim against New Orleans Police Superintendent Ronal Serpas is **DISMISSED WITH PREJUDICE** as frivolous and/or for failure to state a claim on which

relief may be granted.

IT IS FURTHER ORDERED that plaintiff's claim against New Orleans Police Officer D. Wright is **STAYED** and that the Clerk of Court is directed to mark this action **CLOSED** for statistical purposes.

IT IS FURTHER ORDERED that the Court retains jurisdiction and that this case be restored to the trial docket upon plaintiff's motion once his criminal proceedings are concluded, so that the claim against Wright may proceed to final disposition.

New Orleans, Louisiana this 25th day of March, 2013.


CARL J. BARBIER
UNITED STATES DISTRICT JUDGE