

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

MICHAEL CALLOWAY (#96740)

CIVIL ACTION

VERSUS

20-562-SDD-RLB

STATE OF LOUISIANA, ET AL.

RULING AND ORDER

The Court has carefully considered the *Motions*,¹ the record, the law applicable to this action, and the *Report and Recommendation*² of United States Magistrate Richard L. Bourgeois, Jr. dated October 11, 2022, to which an *Objection*³ was filed and has been considered by the Court. The substance of the Plaintiff's objection is that he should be permitted leave to amend to plead a bystander claim. The Court agrees. The Plaintiff is seeking leave to amend to bring a claim that he attempted to bring at the outset of the case. The Court discerns no bad faith or dilatory motive in the Plaintiff's request for leave to amend and it shall therefore be Granted.

In all other respects, the Court hereby approves the *Report and Recommendation* of the Magistrate Judge and adopts it as the Court's opinion herein.

ACCORDINGLY, the Motion to Dismiss⁴ filed on behalf of defendant Pinkney and Smith is GRANTED, without prejudice. Plaintiff is hereby granted leave to amend for the limited purpose of pleading a bystander claim. Plaintiff shall file an amended Complaint within 30 days of the date of this Ruling.

¹ Rec. Docs. 14 and 27.

² Rec. Doc. 31.

³ Rec. Doc. 33.

⁴ Rec. Doc. 14.

IT IS FURTHER ORDERED that the Motion to Dismiss⁵ filed on behalf of defendant Butler is GRANTED IN PART, dismissing: (1) the plaintiff's claims for monetary damage against defendant Butler in his official capacity; (2) the plaintiff's claims regarding the issuance of a false disciplinary report and his resulting disciplinary sentence; and (3) the plaintiff's claim for conspiracy.

IT IS FURTHER ORDERED that, in all other regards, defendant Butler's Motion is denied, and this matter is referred back to the Magistrate Judge for further proceedings herein regarding the plaintiff's claim for excessive force.

IT IS FURTHER ORDERED that the plaintiff is given 21 days to amend his Complaint to allege facts as to physical injuries sustained, if any, due to the alleged use of excessive force by defendant Butler.

Signed in Baton Rouge, Louisiana, on this 18th day of November, 2022.



**CHIEF JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

⁵ Rec. Doc. 27.