

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-CV-254-H

REGINALD WILLIAMS,)
Plaintiff,)
)
v.)
)
C.T. MELOCHICK¹, in his)
individual and official)
capacity (Wake County)
Sheriff's Office),)
Defendant.)

ORDER

This matter is before the court on frivolity review. Plaintiff initiated this action by filing an application to proceed in forma pauperis (IFP) and proposed complaint. United States Magistrate Judge Kimberly A. Swank entered an order requiring plaintiff to particularize his complaint. In response, plaintiff filed a "Motion to Particularize Original Claim for Greater Askings." On December 5, 2018, Judge Swank entered an Order and a Memorandum and Recommendation ("M&R") denying plaintiff's motion for counsel, recommending plaintiff's claim against Defendant Melochick in his official capacity, as well as any purported claim

¹ Plaintiff identifies Melochick as an officer of the Raleigh Police Department in his "Motion for Federal Panel Review" (Pl.'s Mot. Fed. Panel Rev. [DE # 1-4]) but later identifies Melochick as a Wake County Sheriff's Deputy in his "Motion to Particularize Original Claim for Greater Askings." (Pl.'s Mot. Particularize Original Claim Greater Askings [DE #4]).

against the Wake County Sheriff's Department, be dismissed pursuant to 28 USC § 1915A(b) as frivolous or for failure to state a claim upon which relief may be granted, and recommending that his § 1983 claim against defendant in his individual capacity be allowed to proceed.

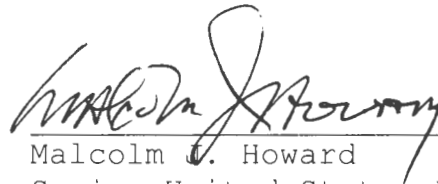
Plaintiff filed objections to the M&R. [DE #6]. Plaintiff's objections show a misunderstanding of the law related to official capacity claims and a misunderstanding of the recommendation of the M&R. The court has carefully reviewed the M&R, objections, and other documents of record. The court finds the objections to be without merit and that the recommendation of Magistrate Judge Swank is, in all respects, in accordance with the law and should be approved.

Accordingly, the court ADOPTS the recommendation of the magistrate judge as its own and hereby DISMISSES plaintiff's claim against Defendant Melochick in his official capacity, as well as any purported claim against the Wake County Sheriff's Department, pursuant to 28 USC § 1915A(b) as frivolous or for failure to state a claim upon which relief may be granted. Plaintiff's § 1983 claim against defendant Melochick in his individual capacity is allowed to proceed.

The Clerk is DIRECTED to file the complaint and issue the summons prepared by Plaintiff. The United States Marshal is

DIRECTED to serve the summons and a copy of the complaint on Defendant.

This 25th day of April 2019.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", written over a horizontal line.

Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
#26