

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

NATHAN DEAN ALEXANDER,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-15-0484-HE
	)	
JOHN WHETSEL, Oklahoma County	)	
Sheriff, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff Nathan Dean Alexander, appearing *pro se* and *in forma pauperis*, filed this action asserting claims under §1983. Consistent with 28 U.S.C. §636(b)(1)(B) and (C), the matter was referred for initial proceedings to Magistrate Judge Bernard M. Jones. He has recommended that motions to dismiss filed by defendants Phillips and the Oklahoma County Public Defender's Office and by defendant Whetsel be granted. He also has concluded that plaintiff's claims against defendants Oklahoma County Detention Center Staff Personnel and Armark Food Services, Inc. are subject to dismissal on initial screening pursuant to 28 U.S.C. §§1915(e)(2)(B)(ii) and §1915A(b)(1) for failure to state a claim. Because he recommends that plaintiff's claims against most defendants be dismissed, the magistrate judge suggests that plaintiff's motion for appointed counsel [Doc. #27] be denied.

The Report and Recommendation does not conclude the action with respect to all claims and parties. Because plaintiff has not served defendant Byron Collins, Magistrate Judge Jones has given him the opportunity to show cause why his claims against defendant Collins should not be dismissed. While plaintiff responded to the show cause order, he did

not object to the magistrate judge's Report and Recommendation. He thereby waived his right to appellate review of the factual and legal issues it addressed. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010); *see* 28 U.S.C. §636(b)(1)(C).

Accordingly, the court **ADOPTS** Magistrate Judge Jones's Report and Recommendation and **GRANTS** the motions to dismiss filed by defendants Phillips and the Oklahoma County Public Defender's Office [Doc. # 30] and defendant Whetsel [Doc. # 36]. The claims against these defendants and against the Oklahoma Detention Center Staff Personnel and Armark Food Service, Inc. are **DISMISSED** for failure to state a claim.<sup>1</sup>

Defendant Collins appears to be the principal defendant and it appears from plaintiff's response to the show cause order that plaintiff seeks legal counsel to assist him in obtaining service on defendant Collins. The court therefore concludes the motion for appointed counsel should be considered in conjunction with plaintiff's response to the show cause order and refers that motion back to the magistrate judge.<sup>2</sup>

**IT IS SO ORDERED.**

Dated this 21st day of July, 2016.

  
JOE HEATON  
CHIEF U.S. DISTRICT JUDGE

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<sup>1</sup>*As the court concludes plaintiff has failed to state a claim under state law against any of these defendants, it does not have to consider whether, as the magistrate judge recommends, it should decline to exercise supplemental jurisdiction over any state law claims that are alleged.*

<sup>2</sup>*The court is not, however, by the referral indicating how the motion should be resolved.*