

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANDRE PADEN, et al.,

Plaintiffs,

v.

JAMES WAGNER, et al.,

Defendants.

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3:16-CV-2565
(JUDGE MARIANI)

FILED
SCRANTON
JUN -1 2017

PER AM
DEPUTY CLERK

ORDER

AND NOW, THIS 15 DAY OF June, 2017, upon review of Magistrate Judge Mehalchick's Report & Recommendation, (Doc. 24), for clear error and manifest injustice,¹ **IT IS HEREBY ORDERED THAT:**

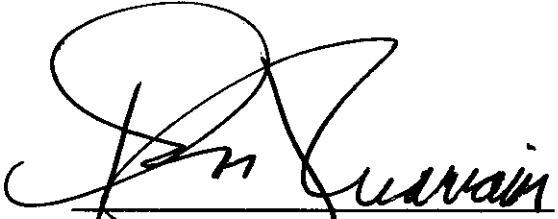
1. The Report & Recommendation, (Doc. 4), is **ADOPTED** for the reason stated therein, except as modified below.
2. The Court interprets Plaintiff's James Williams letter to this Court asking to withdraw from the present action, (Doc. 19), as a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and deems him **DISMISSED** from this action. Plaintiff James Williams's claims against Defendants Wagner and Anglemyer are therefore **DISMISSED WITHOUT PREJUDICE**.

¹ On April 12, 2017, this Court granted Plaintiff Paden an extension of time for which to file objections to the R&R. (Doc. 30). Since that time, Plaintiff Paden has filed a document titled "original statement of claim." (Doc. 35). This document appears to be a reiteration of Plaintiff's complaint with some alterations. Nonetheless, it is clear that, even when construing the document liberally, it is not an objection to the R&R itself.

Plaintiff Sanford Williams, for his part, has filed multiple documents titled "statement of claim" (Docs. 26, 31, 33, & 34), and one "notice" which indicates Plaintiff Sanford Williams's intent to file for leave to amend his complaint. The Court, even when construing these documents liberally, does not interpret any of them as objections to the R&R.

3. Defendant Commonwealth of Pennsylvania is **DISMISSED** as erroneously identified.
4. Plaintiffs' claims against Defendant Catherine Pirolli are **DISMISSED WITH PREJUDICE** as failing to state a claim upon which relief can be granted. Defendant Pirolli is **DISMISSED** from the action.
5. Plaintiffs' claim against Defendant James Gregor for ineffective assistance of counsel is **DISMISSED WITH PREJUDICE** as failing to state a claim upon which relief can be granted because a claim for ineffective assistance of counsel is not cognizable under § 1983. See *Polk County v. Dodson*, 454 U.S. 312, 318 n.7, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981); *Introcaso v. Meehan*, 338 F. App'x 139, 142 (3d Cir. 2009) ("We also note that Introcaso does not frame these claims as legal malpractice under state law, and ineffective assistance of appointed counsel in representing a defendant is not actionable under § 1983"); see also *Winston v. Bauer*, 2010 WL 3811314, at *10 (W.D. Pa. 2010) ("[T]o the extent Plaintiff is asserting some kind of ineffective-assistance-of-counsel claim relative to his DUI or other criminal matters, those types of claims are the proper subject of state or federal habeas corpus proceedings, not federal civil rights actions"). Defendant Gregor is **DISMISSED** from the action.
6. Plaintiffs' claims against Defendants Wagner and Aglemyer for perjury are **DISMISSED WITH PREJUDICE** for failing to state a claim upon which relief can be granted.

7. Plaintiffs' claims against Defendants Wagner and Aglemyer for deliberate indifference are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief can be granted. Plaintiffs, however, are granted **leave to amend** their claims for deliberate indifference within **thirty (30) days** from the date of this Order.
8. Plaintiffs' claims against Defendants Wagner and Aglemyer for defamation are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief can be granted. Plaintiffs, however, are granted **leave to amend** their claims for defamation within **thirty (30) days** from the date of this Order.
9. Plaintiffs' claims against Defendants Wagner and Aglemyer for malicious prosecution and false arrest may proceed.
10. The case is **REMANDED** to Magistrate Judge Mehalchick for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge