

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Clifford Joseph Karolski,)	
)	
Plaintiff,)	Civil Action No. 15-1101
)	
v.)	
)	United States Magistrate Judge
Chief Davis, Assistant Chief Don Couch,)	Cynthia Reed Eddy
Detective Stephen Roberts,)	
(City of Aliquippa),)	
)	
Defendants.)	
)	
)	

MEMORANDUM ORDER¹

Cynthia Reed Eddy, United States Magistrate Judge

Pending before the Court is Defendant City of Aliquippa’s motion to dismiss for failure to state a claim and brief in support thereof. (ECF Nos. 46, 47). For the reasons that follow, said motion will be granted and the City of Aliquippa (“the City”) will be dismissed from this case.

Plaintiff Clifford Joseph Karolski, who is proceeding *pro se* and currently confined at SCI-Camp Hill based on an unrelated incident, brings this action under 42 U.S.C. § 1983, claiming that his federal rights were violated by the above-captioned Defendants when he was falsely charged with numerous counts of arson, notwithstanding his alibi, and was incarcerated for approximately one month until his charges were dismissed by a magistrate at his preliminary hearing.

¹ Because all of the parties have voluntarily consented to have the undersigned conduct any and all proceedings in this matter, the undersigned has authority to enter this Memorandum Order on the pending dispositive motion. (ECF Nos. 9, 40); 28 U.S.C. § 636(c); Fed.R.Civ.P. 73.

On December 22, 2016, the Court entered a Memorandum Opinion and Order (ECF Nos. 41, 42) that dismissed, *inter alia*, all of Plaintiff's claims in his amended complaint against the City.² The Court allowed Plaintiff to file a second amended complaint with respect to his claims for wrongful arrest, malicious prosecution, and false imprisonment on or before January 20, 2017. The Court received Plaintiff's second amended complaint past that date on January 27, 2017, but it was dated January 19, 2017. (ECF No. 43). Accordingly, under the prisoner mailbox rule, the Court deems the second amended complaint to be timely filed. *See Pearson v. Sec'y Dep't of Corr.*, 775 F.3d 598, 600 n. 2 (3d Cir. 2015).

In filing his second amended complaint, it appears that Plaintiff may have abandoned his claims against the City because there are no specific factual allegations against it. This is not entirely clear, however, because he lists the City in the caption, but only in parentheses after the other individual Defendants. Nevertheless, even if Plaintiff is still attempting to pursue claims against the City, he has failed to state a facially plausible claim for relief. As the City argues in its motion to dismiss, there are no well-pleaded factual allegations that allow the Court to draw a reasonable inference that the City had in place an unconstitutional policy, practice, or custom that was the moving force behind the alleged constitutional violation. *See* (Br. in Supp. at 7-8). Instead, the second amended complaint only makes assertions against the individual Defendants: Davis, Couch, and Roberts. Therefore, there are insufficient allegations in the second amended complaint to state a claim for municipal liability against the City, *see Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691-94 (1978), and the Court will grant the City's motion, which Plaintiff

² The Court also dismissed the Pennsylvania State Police and the Arson Division of the Pennsylvania State Police from the case pursuant to Eleventh Amendment immunity, and dismissed the following claims from the amended complaint with prejudice: failure to do due diligence; failure to be provided *Miranda* warnings; slander; deceit; misconduct; and wrongful incarceration.

has chosen not to oppose.³

Because Plaintiff failed to correct the pleading deficiencies against the City after being put on notice of the same via the prior Memorandum Opinion, the Court finds that allowing Plaintiff another attempt to amend this claim would be futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002). Additionally, the Court hereby incorporates its discussion of municipal liability in the prior Memorandum Opinion (ECF No. 41 at 14-16) as if the same is fully set forth herein.

AND NOW, this 4th day of April, 2017, upon consideration of the Court's Memorandum Opinion and Order from December 22, 2016, the second amended complaint, and Defendant City of Aliquippa's motion to dismiss and brief in support thereof, it is hereby **ORDERED** that the City of Aliquippa's Motion to Dismiss for Failure to State a Claim (ECF No. 46) is **GRANTED**. It is further **ORDERED** that the City of Aliquippa is hereby dismissed from this action with prejudice.

Dated: April, 4, 2017.

By the Court:

s/ Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

cc: **CLIFFORD JOSEPH KAROLSKI**
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³ Plaintiff's response in opposition to the pending motion was due by March 6, 2017.