

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KENNETH WAYNE HARDING,)	
)	
Plaintiff,)	
)	No. 3:13-cv-0449
v.)	
)	Judge Sharp
DAVIDSON COUNTY SHERIFF'S)	Magistrate Judge Griffin
OFFICE, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is a Report and Recommendation (“R & R”) of the Magistrate Judge, concluding,

Given the dearth of evidence from the plaintiff supporting his claims, any factual questions fail to rise to the level of genuine issues of material fact that require this action to proceed to trial. The only actual evidence before the Court is that which has been presented by the Defendant. In light of this evidence and in light of the lack of any supporting evidence from the plaintiff, no reasonable jury could find that the plaintiff suffered a constitutional violation at the hands of Defendant Mitchell based on the constitutional standard required for the plaintiff’s claims. Because the Court finds that there is insufficient evidence to support a constitutional claim, it is unnecessary to address the Defendant’s alternative argument of qualified immunity.

(Docket Entry No. 41 at 7). Therefore, the Magistrate Judge recommended,

[Defendant Mitchell]’s Motion For [sic] Summary Judgment (Docket Entry No. 33) be GRANTED and that this action be DISMISSED WITH PREJUDICE.

The Court further RECOMMENDS that any appeal NOT be certified under 28 U.S.C. § 1915 (a)(3) as taken in good faith. (*Id.*).

A response in opposition was filed to the R & R, stating,

I Kenneth W. Harding Disagree [sic] with the for [sic] dismissal of this case! [sic] cause I didn’t understand the paper work that was sent to me. But I am going to

ask the court to proceed to trial with the Evidence [sic] I'm providing at this time.
Thanks!

(Docket Entry No. 44 at 1).¹ Having thoroughly reviewed the record in this case and the applicable law in accordance with Rule 72(b), the Court will accept the R & R of the Magistrate Judge.

Accordingly, the Court hereby rules as follows:

(1) The Report and Recommendation (Docket Entry No. 41) is hereby ACCEPTED and APPROVED;

(2) *Defendant Leronce Mitchell's Motion for Summary Judgment* (Docket Entry No. 33) is hereby GRANTED;

(3) All other pending motions are hereby TERMINATED as moot;

(4) This case is hereby DISMISSED WITH PREJUDICE; and

(5) The Court hereby certifies that any appeal would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

The Clerk is directed to enter Judgment in a separate document in accordance with Federal Rule of Civil Procedure 58.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE

¹ As a general rule, district courts do not have to consider arguments on review that were not raised before the magistrate judge. *See Murr v. United States*, 200 F.3d 895, 902 (6th Cir. 2000) (“The magistrate [] never had the opportunity to consider this issue. Courts have held that while the Magistrate Judge Act, permits *de novo* review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate. Hence, Petitioner’s failure to raise this claim before the magistrate constitutes waiver .”). Consequently, the Court declines to address Plaintiff’s new evidence that the Magistrate Judge did not have the opportunity to consider.