Peterson v. Adams et al Doc. 129

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

TIMOTHY J. PETERSON, Plaintiff, v. IAN ADAMS, in an individual and official capacity; DOUG DIAMOND, in an official capacity; WEST JORDAN CITY; SALT LAKE COUNTY; JAMES "JIM" WINDER, in an individual and official capacity; and JOHN AND/OR JANE DOES 1-20, Defendants.	**ORDER ADOPTING REPORT & RECOMMENDATION** Case No. 2:16-cv-00775-RJS-PMW District Judge Robert J. Shelby Magistrate Judge Paul M. Warner

Defendants Ian Adams, Doug Diamond, West Jordan City, Salt Lake County, and James Winder request summary judgment on Plaintiff Timothy Peterson's civil rights claims in three separate motions.[1] Peterson has not responded to any of the Motions. Now before the court is the Report & Recommendation prepared by Magistrate Judge Paul M. Warner in which he recommends granting summary judgment on all Motions. For the reasons explained below, the court adopts the Report & Recommendation in its entirety, grants summary judgment on all Motions in favor of Defendants, and directs the Clerk of Court to close this case.

I. Background

This case arises out of Peterson's arrest in July 2014, and medical treatment following arrest. During arrest, Peterson was involved in an altercation with Officer Ian Adams which resulted in Peterson being shot twice. The District Attorney's Office prosecuted Peterson for

[1] *See* Dkts. 105, 108, 111.

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assault against a police officer, and successfully established probable cause for the charge at a preliminary hearing. Later, a jury acquitted Peterson. He spent about nineteen months in jail before his acquittal.

After his acquittal, Peterson filed the complaint in the instant case. He alleges multiple causes of action against the various Defendants for alleged deprivation of his constitutional rights in violation of 42 U.S.C. § 1983. First, against Ian Adams, Plaintiff brings claims for (1) excessive force, (2) malicious prosecution, and (3) false arrest.[2] Plaintiff brings claims against Doug Diamond and West Jordan City for (1) excessive force, (2) policy and custom, (3) malicious prosecution, and (4) false arrest. Finally, Plaintiff brings claims against James Winder and Salt Lake County for (1) failure to provide adequate medical care, (2) failure to provide adequate medical care – policy and custom, and (3) malicious prosecution.

On September 7, 2018, Judge Warner filed a thirty-six-page Report & Recommendation in which he recommends granting summary judgment on all claims. Judge Warner instructed the parties that any objection to the Report & Recommendation must be filed within 14 days of service, and warned that failure to do so may constitute waiver of objections on subsequent review.[3] After more than three weeks, no party has filed an objection.

II. Analysis and Order

Because no party objected, the court reviews Judge Warner's Report & Recommendation for clear error.[4] Having carefully reviewed his thorough analysis, the court concludes that Judge Warner's reasoning and conclusions are well supported. The court discerns no clear error.

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[2] *See* dkt no. 54 at 8-10, and 14-17.

[3] Dkt. 128 at 36 (*citing* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)).

[4] *See Summers v. State of Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) ("In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate.").

Accordingly, the court **ADOPTS** the Report & Recommendation in its entirety and **GRANTS** Defendants' Motions for Summary Judgment.[5]

Should Peterson wish to appeal this ruling, he may do so within 30 days from the date of this Order.[6] If he wishes to apply to proceed in forma pauperis on appeal to avoid paying fees and costs, he may file a motion with this court accompanied by Appellate Form 4, available on the United States Courts Appellate Rules Form website.[7] Finally, there are a variety of legal aid organizations Peterson may contact if he requires assistance filing or prosecuting his appeal. The Utah Court website list some of these resources.[8]

The Clerk of Court is directed to **CLOSE** this case.

SO ORDERED this 26th day of September, 2018.

BY THE COURT:

ROBERT J. SHELBY

[5] Dkts. 105, 108, 111.

[6] Fed. R. App. P. 4.

[7] United States Courts, *Appellate Rules Forms*, http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/appellate-rules-forms.

[8] Utah Courts, https://www.utcourts.gov/howto/legalclinics/.