

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

JOHN P. MCSHEFFREY,

Plaintiff,

v.

ACTION NO. 2:21cv630

LILY I. WILDER, et al.,

Defendants.

ORDER

Plaintiff John P. McSheffrey (“Plaintiff”), appearing *pro se*, filed this action pursuant to 42 U.S.C. § 1983 to redress alleged violations of his Fourth Amendment rights. *See generally* Third Am. Compl., ECF No. 143. This matter is before the Court on Motions to Dismiss filed by Defendants Ryan Davis (“Davis”), Lily Wilder (“Wilder”), Kimberly Wood (“Wood”), and Brent Johnson (“Johnson”). Davis’s Mot. Dismiss, ECF No. 146; Wilder’s Mot. Dismiss, ECF No. 148; Wood’s Mot. Dismiss, ECF No. 151; Johnson’s Mot. Dismiss, ECF No. 156.

All four of the dismissal motions were referred to United States Magistrate Judge Robert J. Krask for a Report and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure. Order at 1-3, ECF No. 184. Upon review, United States Magistrate Judge Krask determined that: (i) Plaintiff fails to state a § 1983 claim against any of the Defendants in their official capacities; (ii) Johnson and Wood are entitled to prosecutorial immunity with respect to Plaintiff’s claims for damages under § 1983; (iii) Plaintiff fails to state a claim against Davis for malicious prosecution under the Fourth Amendment; (iv) Plaintiff states a claim against Wilder for malicious prosecution under the Fourth

Amendment; and (v) Plaintiff fails to state a claim for declaratory relief against any of the Defendants. R. & R. at 9-27, ECF No. 189. Based on these determinations, United States Magistrate Judge Krask entered a Report and Recommendation on November 16, 2023, in which he recommends that the Motions to Dismiss filed by Davis, Wood, and Johnson be granted in full, and that these Defendants be dismissed from this action. *Id.* at 27. United States Magistrate Judge Krask further recommends that Wilder's Motion to Dismiss be granted as to Plaintiff's official capacity claim and claim for declaratory relief, but denied as to the remainder of Wilder's motion. *Id.*

The parties were advised of their right to file written objections to the findings and recommendations of United States Magistrate Judge Krask. *Id.* at 28. The Court received objections from Plaintiff and Wilder. *See* Wilder's Obj., ECF No. 193; Pl.'s Obj., ECF No. 194; Davis's Resp., ECF No. 201; Johnson & Wood's Resp., ECF No. 196; Pl.'s Replies, ECF Nos. 200, 202.

The Court, having reviewed the record and examined the objections to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, agrees with the Report and Recommendation on the grounds stated therein. Accordingly, the Court **ADOPTS** and **APPROVES** the findings and recommendations set forth in the November 16, 2023 Report and Recommendation. It is, therefore, **ORDERED** that:

- (i) Davis's Motion to Dismiss, ECF No. 146, is **GRANTED**;
- (ii) Wood's Motion to Dismiss, ECF No. 151, is **GRANTED**;
- (iii) Johnson's Motion to Dismiss, ECF No. 156, is **GRANTED**; and
- (iv) Wilder's Motion to Dismiss, ECF No. 148, is **GRANTED in part** and **DENIED in part**.¹

¹ When Plaintiff initiated this action, he only asserted claims against Wilder and Davis. Compl., ECF No. 1. Plaintiff, Wilder, and Davis provided express consent to proceed before a United States Magistrate Judge in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73. Pl.'s Consent, ECF No. 30; Wilder's Consent, ECF No. 29; Davis's Consent, ECF

The Clerk is **DIRECTED** to send a copy of this Order to Plaintiff and all counsel of record.

IT IS SO ORDERED.

/s/ 

Mark S. Davis

CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

January 10, 2024

No. 25. Therefore, the Court entered an Order of Referral on February 23, 2022, that referred this action to United States Magistrate Judge Krask “to conduct any and all further proceedings in this case, including the trial, and [to] order the entry of a final judgment.” Order Referral at 1, ECF No. 33.

In an Opinion and Order entered on May 22, 2023, Plaintiff was granted leave to amend the operative complaint in this action. Op. & Order at 11-12, ECF No. 132. Plaintiff subsequently filed a Third Amended Complaint that included Wood and Johnson as additional Defendants. Third Am. Compl., ECF No. 143. Wood and Johnson did not provide consent to proceed before a United States Magistrate Judge, and as a result, the case was reassigned to the undersigned. Order at 1, ECF No. 184.

As set forth herein, the Court has granted the dismissal motions filed by Wood, Johnson, and Davis. Therefore, the only parties remaining in this case are Plaintiff and Wilder, both of whom previously provided their express consent to proceed before a United States Magistrate Judge. Pl.’s Consent at 1; Wilder’s Consent at 1. Accordingly, this action will be referred back to United States Magistrate Judge Krask unless the Court receives an objection to such referral within ten days of the date of entry of this Order.