

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

CARLOS ALROY WOODLEY,)
)
 Plaintiff,)
 v.) Civil Action No. 3:21-cv-615-HEH
)
 LT. SAMPLE, *et al.*,)
)
 Defendants.)

MEMORANDUM OPINION
(Dismissing Defendant for Lack of Service)

Plaintiff, a Virginia inmate proceeding *pro se* filed this civil rights action. (ECF No. 1.) The matter is before the Court on Plaintiff’s failure to serve Defendant Barley within the time required by Federal Rule of Civil Procedure 4(m).

Pursuant to Federal Rule of Civil Procedure 4(m), Plaintiff had ninety (90) days from the filing of the complaint to serve the defendants. Here, that period began on June 8, 2022. By Memorandum Order entered on October 25, 2022 (ECF No. 37), the Court directed Plaintiff, within twenty (20) days of the date of entry thereof, to show good cause for his failure to serve Defendant Barley within the time required by Rule 4(m). Plaintiff has not responded. Accordingly, the action will be dismissed without prejudice against Defendant Barley.

It is unclear whether Woodley was a convicted felon or a pretrial detainee at the time of the events challenged in the Particularized Complaint. Whether Woodley was a convicted felon or a pretrial detainee at the relevant times determines what constitutional

amendment governs his claims. *See Woodley v. Leabough*, No. 3:20–CV–993–HEH, 2022 WL 15524592, at *7 (E.D. Va. Oct. 27, 2022). Accordingly, within twenty (20) days of the date of entry hereof, Woodley will be directed to provide a statement reflecting the date and nature of any conviction within the last eight years. The failure to provide such a statement will result in the dismissal of the action. *See* Fed. R. Civ. P. 41(b). The schedule for filing a motion for a summary judgment will be suspended.

An appropriate Order shall accompany this Memorandum Opinion.



/s/

Henry E. Hudson
Senior United States District Judge

Date: Dec. 1, 2022
Richmond, Virginia