Swimpson v. Western VA Regional Jail,et al Doc. 25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WILLIE CLARENCE SWIMPSON,	)	**Civil Action No. 7:16cv00434**
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM OPINION**
	)	
WESTERN VA REGIONAL JAIL	)	
MEDICAL DEPT.,	)	**By: Norman K. Moon**
Defendant.	)	**United States District Judge**

After being given the opportunity to amend his complaint, plaintiff Willie Clarence Swimpson, a Virginia inmate proceeding *pro se*, filed an amended complaint pursuant to 42 U.S.C. § 1983, naming only the "Western VA Regional Jail Medical Dept." as a defendant. (Docket No. 21). To state a cause of action under § 1983, a plaintiff must allege facts indicating that he has been deprived of rights guaranteed by the Constitution or laws of the United States and that this deprivation resulted from conduct committed by *a person* acting under color of state law. *West v. Atkins*, 487 U.S. 42 (1988) (emphasis added). Because a medical department is not a legal entity, it is not a "person" subject to suit under § 1983, and Swimpson cannot maintain this action against it. *See Harden v. Green*, 27 F. App'x 173, 178 (4th Cir. 2001) ("The medical department of a prison may not be sued, because it is not a person within the meaning of § 1983."). Accordingly, I will dismiss Swimpson's complaint without prejudice pursuant to 42 U.S.C. § 1997e(c)(1). I note that nothing in this opinion precludes Swimpson from refiling his claims against any individuals who may have violated his federal rights, assuming he has exhausted his remedies in accordance with 42 U.S.C. § 1997e.

ENTER: This 24th day of July, 2017.

Norman K. Moon
NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

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