

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

DANA DECEMBER SMITH,

Plaintiff,

v.

Civil Action No. 2:17-cv-03188

JOANNA I. TABIT, Judge, 13<sup>th</sup>  
Judicial Circuit, Kanawha  
County Circuit Court and  
CHARLES T. MILLER, Chief  
Prosecuting Attorney of  
Kanawha County, West Virginia,

Defendants.

MEMORANDUM OPINION AND ORDER

This action concerns a 42 U.S.C. § 1983 procedural due process claim filed by Dana December Smith on June 6, 2017. Smith was convicted on two counts of first-degree murder in a 1992 jury trial in the Circuit Court of Kanawha County. E.g., Smith v. Ballard, No. 2:09-cv-00242, 2010 WL 3835710, at \*3 (S.D. W. Va. Sept. 29, 2010) (dismissing a 28 U.S.C. § 2254 petition for habeas corpus filed by Smith). His complaint challenges the state circuit court's denial of his W. Va. Code § 15-2B-14 motion for post-conviction DNA testing and seeks an injunction under § 1983 "to require the Defendants and/or the State courts to release [] preserved biological evidence for DNA testing . . . ." Compl. 5, 19.

The matter was previously referred to United States Magistrate Judge Dwane L. Tinsley for submission to the court of his Proposed Findings and Recommendation ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On April 17, 2020, the magistrate judge entered his PF&R recommending that the court dismiss the plaintiff's complaint for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915A. ECF No. 11. Smith filed objections to the PF&R on June 2, 2020. ECF No. 16.

It has now come to the court's attention that Smith passed away on September 13, 2020. The court is in possession of a report composed by Mt. Olive Correctional Complex and Jail, his place of incarceration, as well as a news article that document his death. See Leslie Rubin, [Man convicted of '91 double murder in Kanawha County dies after contracting COVID-19](https://wchstv.com/news/local/man-convicted-of-91-double-murder-in-kanawha-county-dies-after-contracting-covid-19), WCHSTV (Sept. 22, 2020), <https://wchstv.com/news/local/man-convicted-of-91-double-murder-in-kanawha-county-dies-after-contracting-covid-19>.

Courts may take judicial notice of "a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). The court concludes that the report, coupled with the news article, is a

source whose accuracy cannot reasonably be questioned and accordingly takes judicial notice of the plaintiff's death.

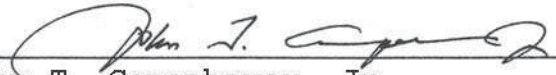
"The doctrine of mootness constitutes a part of the constitutional limits of federal court jurisdiction." Brooks v. Vassar, 462 F.3d 341, 348 (4th Cir. 2006). "When a case is moot, 'the court's subject matter jurisdiction ceases to exist.'" Wicomico Nursing Home v. Padilla, 910 F.3d 739, 749 (4th Cir. 2018) (quoting S.C. Coastal Conservation League v. U.S. Army Corps of Eng'rs, 789 F.3d 475, 482 (4th Cir. 2015)).

"Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969) (citation omitted). The Fourth Circuit has found that because "it is axiomatic that a deceased litigant cannot enjoy prospective injunctive relief," such a litigant lacks a legally cognizable interest in the outcome of a case involving a claim for prospective injunctive relief. Wicomico Nursing Home, 910 F.3d at 749 (citation and internal quotation marks omitted). Therefore, such cases are moot. See id.

Smith's passing has mooted this case that seeks prospective injunctive relief. The case must be dismissed for lack of subject matter jurisdiction. Accordingly, it is ORDERED that this case be, and it hereby is, DISMISSED for lack of subject matter jurisdiction.

The Clerk is directed to transmit copies of this order to all counsel of record and any unrepresented parties.

ENTER: September 24, 2020

  
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John T. Copenhaver, Jr.  
Senior United States District Judge