

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Byron David Smith,

Civ. No. 22-1205 (PAM/DTS)

Plaintiff,

v.

ORDER

Brian Middendorf, Morrison County
Attorney, and Michel Wetzels, Morrison
County Sheriff (former); and their
respective staffs, in their individual and
professional capacities;

Defendants.

This matter is before the Court on the Report and Recommendation (“R&R”) of United States Magistrate Judge David T. Schultz dated June 7, 2022. The R&R recommends dismissal of this matter without prejudice because Plaintiff fails to state a claim for relief.

According to statute, the Court must conduct a de novo review of any portion of the R&R to which specific objections are made. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b). Smith filed a brief (Docket No. 8), which the Court construes as an objection to the R&R. However, the brief fails to reference the R&R or state any specific objection to the R&R. Indeed, Smith presents no reason as to why the R&R’s determination that his claims are barred by Heck v. Humphrey, 512 U.S. 477 (1994), was clearly erroneous, and thus his objections fail. Moreover, the R&R explained the deficiencies in Smith’s pleading, and he has failed to cure the deficiencies to state a valid

claim. After conducting the required review, the Court **ADOPTS** the R&R. (Docket No. 7.)

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Court **ADOPTS** the R&R (Docket No. 7);
2. The Complaint (Docket No. 1) is **DISMISSED without prejudice**;
3. Plaintiff's Motion to Appoint Counsel (Docket No. 2) is **DENIED as moot**;
and
4. Plaintiff's Motion for Waiver of Service (Docket No. 3) is **DENIED as moot**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 18, 2022

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge