

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RAYMOND JONES, :
 :
 Plaintiff : **CIVIL ACTION NO. 4:21-0336**
 :
 v. : **(MANNION, D.J.)**
 : **(ARBUCKLE, M.J.)**
 WILLIAM A. BEHE, :
 :
 Defendants :

ORDER

Presently before the court is the report and recommendation (“Report”) of Magistrate Judge William I. Arbuckle, (Doc. 12). The Report recommends that this court, pursuant to 28 U.S.C. §1915(e)(2)(B), dismiss with prejudice plaintiff Raymond Jones’s Complaint, (Doc. 1), which requests a writ of mandamus to order defendant AUSA William A. Behe produce evidence withheld during the plaintiff’s criminal trial. Neither party has filed objections to the Report.

Even where no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed.R.Civ.P.72(b) advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa.2010) (*citing Henderson v. Carlson*, 812 F.2d

874, 878 (3d Cir.1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. Local Rule 72.31.

In his Report, Judge Arbuckle reasons that because “[f]ederal prisoners challenging their convictions must generally do so through a 28 U.S.C. §2255 habeas motion,” mandamus relief is unavailable in this case. (Doc. 12 at 7); *Okereke v. United States*, 307 F.3d 117, 120 (3d Cir. 2002). The Report further observes that “petitioners cannot file a writ of mandamus even if he was previously denied habeas relief, or had a difficult time pursuing a successive habeas motion.” (Doc. 12 at 7); *In re Spann*, 403 Fed.Appx. 741, 744 (3d Cir. 2010). For these reasons, Judge Arbuckle recommends this court dismiss the plaintiff’s Complaint with prejudice since granting leave to amend would be futile.

The court has conducted a thorough review of the Report, the pleadings, and the other filings of record, as well as the applicable law in this case, and the court agrees with Judge Arbuckle’s sound reasoning which led him to his recommendation. Accordingly, the court will adopt the Report in its entirety as the decision of this court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The Report of Judge Arbuckle, (Doc. 12), is
ADOPTED IN ITS ENTIRETY;
- (2) Plaintiff's Complaint, (Doc. 1), is **DISMISSED** with
prejudice for failure to state a claim upon which relief
can be granted;
- (3) The Clerk of the Court is directed to **CLOSE** the
case.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: January 25, 2022

21-336-01