

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA, CHARLESTON DIVISION

Peter Machlup v. Lucas Johnson

Machlup v. Johnson · No. 2:25-cv-00619 · Decided February 12, 2026

SUMMARY

This Proposed Findings and Recommendation addresses a pro se plaintiff's failure to serve process and respond to an order to show cause in a 42 U.S.C. § 1983 action alleging a Fourth Amendment violation. The magistrate judge recommends dismissal with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with court orders.

CASE DETAILS

COURT	United States District Court for the Southern District of West Virginia, Charleston Division
WRITING FOR THE COURT	Dwane L. Tinsley, United States Magistrate Judge
JURISDICTION	United States District Court for the Southern District of West Virginia, Charleston Division
DECIDED	February 12, 2026
DOCKET	2:25-cv-00619
DISPOSITION	other
PROCEDURAL POSTURE	Proposed findings and recommendation by a magistrate judge, referred under 28 U.S.C. § 636(b)(1)(B), recommending dismissal with prejudice for failure to effect service and failure to prosecute.
STANDARD OF REVIEW	The Fourth Circuit's four-factor standard for dismissal for failure to prosecute: the plaintiff's personal responsibility, prejudice to the defendant, a drawn-out history of deliberate delay, and the effectiveness of less drastic sanctions.
PRECEDENTIAL VALUE	Nonprecedential proposed findings and recommendation; not a final disposition unless adopted by the district judge.
PARTIES	Peter Machlup v. Lucas Johnson

TOPICS

- service of process
- sanctions
- civil procedure
- section 1983
- police misconduct

PRACTICE AREAS

Civil procedure

Civil rights

Federal courts

QUESTIONS PRESENTED

1. Whether the action should be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with court orders.
2. Whether the Fourth Circuit's factors for dismissal for failure to prosecute support dismissal where a pro se plaintiff failed to effect service after an express warning and then failed to respond to an order to show cause.

HOLDINGS

1. The magistrate judge found that dismissal with prejudice was proper under Federal Rule of Civil Procedure 41(b) because Plaintiff failed to effect timely service, failed to file proof of service, and failed to respond to the order to show cause despite multiple express warnings.

KEY QUOTATIONS

“Since dismissal is a severe sanction, the Court must exercise this power with restraint, balancing the need to prevent delays with the sound public policy of deciding cases on their merits.” (2)

“Considering the factors listed above, the Court concludes that any sanction short of dismissal would not be effective.” (2-3)

“Accordingly, the undersigned FINDS that dismissal with prejudice is proper pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.” (3)

FACTUAL BACKGROUND

Plaintiff initiated a pro se civil-rights action alleging a Fourth Amendment violation. The court expressly ordered Plaintiff to effect service under Rule 4 by January 20, 2026 and warned that failure to do so could lead to dismissal. Plaintiff did not file proof of service, did not respond to a subsequent order to show cause, and did not otherwise communicate an intent to pursue the action.

PROCEDURAL HISTORY

Plaintiff, proceeding pro se, filed a 42 U.S.C. § 1983 action alleging a Fourth Amendment violation on October 20, 2025. The magistrate judge ordered Plaintiff to effect service by January 20, 2026, and warned that failure to do so could result in dismissal. After Plaintiff failed to file proof of service, the court issued an order to show cause, but Plaintiff did not respond by the February 9, 2026 deadline. The magistrate judge therefore recommended dismissal with prejudice under Federal Rule of Civil Procedure 41(b), subject to objections and review by the district judge.

DISPOSITION

other

CASES CITED

- Doyle v. Murray, 938 F.2d 33, 34 (4th Cir. 1991)
- Dove v. CODESCO, 569 F.2d 807, 810 (4th Cir. 1978)
- Hillig v. Commissioner of Internal Revenue, 916 F.2d 171, 174 (4th Cir. 1990)
- Attkisson v. Holder, 925 F.3d 606, 626 (4th Cir. 2019)
- Ballard v. Carlson, 882 F.2d 93, 95-96 (4th Cir. 1989)
- Thomas v. Arn, 474 U.S. 140, 155 (1985)
- Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989)
- Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985)
- United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984)

OPINION

Machlup

PER CURIAM.

FOR TINH TEH SEO UUTNHITEERDN S DTIASTTERS CDTI SOTFR WICETS CTO
VUIRRGT INIA

CHARLESTON DIVISION

PETER MACHLUP,

Plaintiff, v. CIVIL ACTION NO. 2:25-cv-00619

LUCAS JOHNSON,

Defendant.

PROPOSED FINDINGS & RECOMMENDATION

This matter is assigned to the Honorable Thomas E. Johnston, United States District Judge, and it is referred to the undersigned United States Magistrate Judge by standing order for submission of proposed findings and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 3). For the reasons set forth herein, the undersigned respectfully RECOMMENDS that this civil action be DISMISSED pursuant to Rule 41(b) of the Federal Rules of Civil Procedure

I. BACKGROUND

On October 20, 2025, Plaintiff, proceeding pro se, initiated the instant civil action claiming entitlement to relief pursuant to 42 U.S.C. § 1983 based upon an alleged violation of Plaintiff's Fourth-Amendment rights. (ECF No. 1). On October 21, 2025, the undersigned entered an Order and Notice, notifying Plaintiff "that he is responsible for effecting timely service of process in accordance with Rule 4 of the Federal Rules of Civil Procedure." (ECF No. 4). The Order and Notice further ordered Plaintiff "to effect service January 20, 2026." Id. Lastly, the Order and Notice expressly notified Plaintiff that "failure to effect service of process on or before the

deadline set forth herein WILL result in the undersigned's recommendation to the presiding District Judge that this civil action be dismissed pursuant to Rules 4(m) and/or 41(b) of the Federal Rules of Civil Procedure." Id. at 2. Plaintiff failed to file proof of service pursuant to Rule 4(l) as ordered by the Court. Accordingly, on January 21, 2026, the Court issued its Order to Show Cause requiring Plaintiff to file a written response showing cause why the action should not be dismissed. Id. at 2. The Order to Show Cause expressly notified Plaintiff that failure to respond by 4:00 p.m. EST on Monday, February 9, 2026, "WILL result in the undersigned's recommendation to the presiding District Judge that this matter be dismissed, with prejudice." Id. To date, however, Plaintiff has not submitted any response or otherwise indicated any intent to proceed with the instant action.

II. DISCUSSION

The Court has the inherent authority to dismiss a case for failure to prosecute and Federal Rule of Civil Procedure 41(b) "provides an explicit basis for this sanction." *Doyle v. Murray*, 938 F.2d 33, 34 (4th Cir. 1991). Since dismissal is a severe sanction, the Court must exercise this power with restraint, balancing the need to prevent delays with the sound public policy of deciding cases on their merits. *Dove v. CODESCO*, 569 F.2d 807, 810 (4th Cir. 1978). The Fourth Circuit requires a trial court to consider four factors before dismissing a case for failure to prosecute: "(1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." *Hillig v. Comm'r of Internal 2 Revenue*, 916 F.2d 171, 174 (4th Cir. 1990). This test, however, is not rigid and ultimately depends on the facts of each case. *Attkisson v. Holder*, 925 F.3d 606, 626 (4th Cir. 2019). See also *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989). Further, dismissal is warranted when a party fails to follow a Court Order. In *Ballard*, the Fourth Circuit reasoned that the Magistrate Judge's "explicit warning that a recommendation of dismissal would result from failure to obey his order is a critical fact that distinguishes this case from those cited by appellant In view of the warning, the district court had little alternative to dismissal [because] [a]ny other course would have placed the credibility of the court in doubt and invited abuse." *Ballard*, 882 F.2d at 95-96. Considering the factors listed above, the Court concludes that any sanction short of dismissal would not be effective. Plaintiff demonstrated a lack of personal responsibility and has deliberately proceeded in a dilatory fashion by failing to effect timely service of process—despite being forewarned by the Court that such inaction could result in dismissal. The Court thereafter issued its Show Cause Order requiring Plaintiff to respond by February 9, 2026, and provided another express warning to Plaintiff that failure to respond would result in dismissal of the lawsuit. Plaintiff still failed to respond to the Court's Show Cause Order without any explanation or justification. Nor has Plaintiff communicated with the Court or otherwise indicated any intent to pursue this civil action. Furthermore, Plaintiff has ignored multiple express warnings that a recommendation of dismissal would result from continued inaction. Just as in *Ballard*, here there is "little alternative to

dismissal” because “[a]ny other course would . . . place[] the credibility of the Court in doubt and invite[] abuse.” Id. Accordingly, the undersigned FINDS that dismissal with prejudice is proper pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. 3

HI. RECOMMENDATION

For the foregoing reasons, it is respectfully RECOMMENDED that this civil action be DISMISSED, with prejudice. Plaintiff is notified that this Proposed Findings and Recommendation is hereby FILED, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure, Plaintiff shall have fourteen (14) days from the date of the filing of this Proposed Findings and Recommendation to file with the Clerk of this Court specific written objections identifying the portions of the Proposed Findings and Recommendation to which objection is made and the basis of such objection; further, pursuant to Rule 6(d), any unrepresented party shall have an additional three (3) days after this fourteen-day period if service is made via U.S. Mail. Extension of this time period may be granted by the presiding District Judge for good cause shown. A copy of any objections shall be provided to Judge Johnston. Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Fourth Circuit Court of Appeals. 28 U.S.C. § 636(b)(1); see *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *Wright v. Collins*, 766 F.2d 841, 846 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). The Clerk is DIRECTED to file this Proposed Findings and Recommendation, and to transmit a copy to Plaintiff at his address of record. ENTERED: February 12, 2026 Dwane L. Tinsley —. United States Magistrate Judge