[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-15264
Non-Argument Calendar

D.C. Docket No. 2:15-cv-14042-DMM

DONALD SPENCE,
individually,

Plaintiff-Appellant,

versus

CITY OF FORT PIERCE,
individually,

Defendant-Appellee,

FORT PIERCE POLICE DEPARTMENT,
individually,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida

(November 30, 2017)

Before MARCUS, WILLIAM PRYOR and ROSENBAUM, Circuit Judges.

PER CURIAM:

Donald Spence, a former police officer, appeals *pro se* the summary judgment against his amended complaint and in favor of the City of Fort Pierce. Spence complained about retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and of the Americans with Disabilities Act of 1990, *id.* § 12112(a), (b), and about a hostile work environment and a failure to accommodate in violation of the Disabilities Act, *id.* Spence argues that he presented sufficient evidence to create a genuine issue of material fact. Spence also argues, for the first time, that his attorney was ineffective and that opposing counsel engaged in professional misconduct, but we decline to review arguments that Spence failed to present to the district court. *See Narey v. Dean*, 32 F.3d 1521, 1526–27 (11th Cir. 1994). We affirm.

Spence joined the Fort Pierce Police Department in February 2008 as a patrol officer, and he served in that capacity until October 2012 when he injured his back and shoulder in a car accident. Spence returned to work in a "light duty capacity" and underwent surgeries on his shoulder that prevented him from driving or making repetitive movements. Spence's supervisors and coworkers pestered him about his work limitations, which led him to file an internal grievance on January 30, 2013, a charge of discrimination with the Equal Opportunity Commission on

June 17, 2013, and this civil action.

We review a summary judgment *de novo*. *Moton v. Cowart*, 631 F.3d 1337, 1341 (11th Cir. 2011). We view the evidence in the light most favorable to the non-moving party. *Id.* Summary judgment is appropriate when the movant establishes that there is no genuine dispute of a material fact and that it is entitled to a judgment in its favor as a matter of law. *Id.*

Spence's claim that the City violated Title VII fails as a matter of law. Title VII prohibits retaliation against employees who oppose discrimination based on "race, color, religion, sex, or national origin." 42 U.S.C. §§ 2000e-3(a), 2000e-2(a)(1). Spence alleged that the City retaliated after he filed grievances about discrimination based on his disability, which is not a characteristic protected by Title VII. Spence's "[u]fair treatment, . . . [which was not] based on race, sex, or national origin, [was] not an unlawful employment practice under Title VII." *See Coutu v. Martin Cty. Bd. of Cty. Comm'rs*, 47 F.3d 1068, 1074 (11th Cir. 1995).

Spence failed to establish a prima facie case of a hostile work environment in violation of the Disabilities Act. Even if we assume, like the district court, that Spence was disabled, he failed to present substantial evidence that his alleged harassment was sufficiently severe or pervasive to "ha[ve] the purpose or effect of unreasonably interfering with [his] work performance or creating an intimidating, hostile, or offensive environment," *Meritor Savings Bank v. Vinson*, 477 U.S. 57,

65 (1986). *See McCann v. Tillman*, 526 F.3d 1370, 1378 (11th Cir. 2008). Spence alleged that his supervisor asked, "When are you coming back?," but that inquiry is not objectively offensive. *See id.* Spence also alleged that a sergeant remarked, "We have people who have lost limbs and return faster than you," "We have a bet going that [another officer] will be back to work and on the road before you," and "You should make it a competition and try to beat him back," and that other officers called him "Officer Kantworkski." But snide offhand comments are not sufficiently severe to affect the conditions of employment. Spence complained that someone changed his profile picture on a hospital computer system, but he admitted that he does not know who performed that act. Spence argues that a supervisor also violated his light duty limitations by requesting that he unlock, open, close, and lock the doors of the lobby, but Spence satisfied the request without difficulty and that isolated incident did not create a hostile working environment. *See id.* at 1379. That Spence was asked to hang posters and shred paper was not actionable because his supervisors withdrew those requests without incident when Spence explained that the tasks exceeded his medical restrictions. And the alleged denial of Spence's requests to identify himself as a police officer, to wear his uniform, and to carry a gun could not create a hostile environment because he admitted that he could not perform the duties of a police officer and that his physician had forbidden him from using a firearm.

Spence also failed to establish a prima facie case of discrimination for failing to accommodate his disability. The City provided Spence a reasonable accommodation. *See Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249, 1255 (11th Cir. 2001). After Spence's accident, the City allowed Spence to perform light duties at the police department and at a substation for more than two and a half years despite reserving the right to terminate him if he could not resume full duties as a patrol officer within six months of returning to work. The single incident in which a supervisor requested that Spence man the doors of the lobby does not prove the City failed to accommodate him. Spence undertook the job and proved physically capable of completing it on the single occasion requested. *See Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997).

The City owed Spencer no duty to give him "the accommodation of [his] choice, but only . . . a reasonable accommodation." *Id.* at 1286 (quoting *Lewis v. Zilog, Inc.*, 908 F. Supp. 931, 948 (N.D. Ga. 1995)). Spence identified the position of misdemeanor investigator as a potential accommodation, but the position was an unfunded temporary assignment. Spence also proposed an assignment to the Detective Bureau, but he applied for the position before his accident and was not selected for an interview.

Spence also failed to establish that he was retaliated against for protesting his allegedly hostile work environment. Spence failed to establish a causal

connection between certain adverse employment actions and his protected activities or to establish that the harassment perpetrated immediately after his protected activities was so severe or pervasive that it created an abusive working environment. *See Gowski v. Peake*, 682 F.3d 1299, 1311 (11th Cir. 2012). Supervisors and coworkers allegedly retaliated by requiring Spence to man the lobby doors, reprimanding him for not "consulting a detective regarding a sexual Assault report," putting the picture of someone else on his hospital pass, searching his driving record, and transferring him to an undesirable substation, but Spence did not allege that the incidents occurred within three to four months of filing his grievance or his charge of discrimination as required to establish causation based on temporal proximity. *See Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). The day after Spence filed his grievance, he allegedly received notice that he could be terminated within 60 days if he did not return to full duty, but that notice did not disrupt his employment or his job performance. *See Gowski*, 682 F.3d at 1312. Spence argues that he was reprimanded for "being involved in a Motor Vehicle Accident" after filing his grievance, but he does not contend that the reprimand was unwarranted. Spence also argues, in his reply brief, that he had to undergo five examinations to obtain disability benefits, but "we do not address arguments raised for the first time in a *pro se* litigant's reply brief." *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

We **AFFIRM** the summary judgment in favor of the City.