

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ELGIN BROWN, #195346,	)	
	)	
	)	
v.	)	CASE NO. 2:13-CV-134-WHA
	)	(WO)
	)	
BOBBY BARRETT,	)	
	)	
Defendant.	)	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This 42 U.S.C. § 1983 action is pending before the court on a complaint filed by Elgin Brown (“Brown”), a former state inmate, challenging the conditions of confinement to which he was subjected during a prior term of incarceration at the Kilby Correctional Facility in mid-2012.

Pursuant to the orders of this court, the defendant filed a written report supported by relevant evidentiary materials, including affidavits and prison records, in which he addresses the claims for relief presented by Brown. *Doc. No. 12*. The report and evidentiary materials refute the conclusory allegations presented in this case. Although Brown filed a response to the report, he failed to present any probative evidence in support of his claims and merely asserted general conclusions regarding the constitutionality of the challenged conditions. *Doc. No. 14*.

Based on a review of the file and under the circumstances of this case, the court

issued an order directing Brown to “advise the court of whether he seeks to proceed in this cause of action.” *Order of October 30, 2015 - Doc. No. 15*. Brown was specifically advised that his failure to respond to this order would result in the dismissal of this case. *Id.* The time allotted Brown for filing a response in compliance with this order expired on November 9, 2015. *Id.* As of the present date, Brown has filed no response to the order. The court therefore concludes that this case should be dismissed.

The court has reviewed the file to determine whether a less drastic measure than dismissal is appropriate. After such review, it is clear that dismissal of this case is the proper course of action at this time. Brown is an indigent individual. Thus, the imposition of monetary or other punitive sanctions against him would be ineffectual. Additionally, Brown’s inaction in the face of the show cause order indicates a loss of interest in the continued prosecution of this case. Finally, the undisputed evidentiary materials submitted by the defendants indicate that no violation of the Constitution occurred. It therefore appears that any additional effort by this court to secure Brown’s compliance would be unavailing and a waste of this court’s limited judicial resources. Consequently, the court concludes that the plaintiff’s failure to comply with the orders of this court warrants dismissal. *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (As a general rule, where a litigant has been forewarned, dismissal for failure to obey a court order is not an abuse of discretion.).

For the above stated reasons, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice for the plaintiff's failure to comply with the orders of this court. It is further

ORDERED that on or before December 28, 2015, the parties may file objections to the Recommendation. Any objections filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which the plaintiff objects. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions" except upon grounds of plain error if necessary in the interests of justice. 11th Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE, this 11<sup>th</sup> day of December, 2015.

/s/ Susan Russ Walker  
SUSAN RUSS WALKER  
CHIEF UNITED STATES MAGISTRATE JUDGE