

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CHARLES C. HARBISON,)	
)	
Plaintiff,)	Civil Action No. 7:19cv00805
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
VA DEPT. OF CORR., <i>et al.</i> ,)	By: Hon. Thomas T. Cullen
)	United States District Judge
Defendants.)	

Plaintiff Charles C. Harbison, a Virginia inmate proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On October 30, 2020, the defendants filed a motion to dismiss Harbison’s complaint and, on November 2, 2020, the court issued a notice pursuant to *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 2005). (*See* ECF Nos. 14 and 16.) The *Roseboro* notice gave Harbison 21 days to file a response to the motion to dismiss and advised him that, if he did not respond to the defendants’ motion to dismiss, the court would “assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant[s] state[] in their responsive pleading(s).” (*See* ECF No. 16.) The notice further advised Harbison that, if he wished to continue with the case, it was “necessary that Plaintiff respond in an appropriate fashion,” and that if he failed to file some response within the 21-day period, the court “may dismiss the case for failure to prosecute.” (*Id.*) Harbison did not respond to the motion to dismiss.¹ Therefore, the court will dismiss Harbison’s complaint without prejudice for failure to prosecute.

¹ The court notes that, although Harbison did not respond to the defendants’ motion to dismiss, he did file a motion to amend his complaint to add Warden Kanode and Marcus Elam as defendants and remove the

