

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

JOHN DUNCAN, #180841,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:09-CV-661-ID
)	[WO]
)	
KENNETH JONES, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

This case is pending before the court on a 42 U.S.C. § 1983 complaint filed by John Duncan [“Duncan”], a state inmate, on July 15, 2009. In his complaint, Duncan challenges the constitutionality of a disciplinary lodged against him at the Bullock County Correctional Facility for creating a security hazard.

Pursuant to the orders of this court, the defendants filed a written report supported by relevant evidentiary materials in which they addressed the claims for relief presented by Duncan. The report and evidentiary materials refute the self-serving, conclusory allegations presented in the instant cause of action. The court thereafter issued an order directing Duncan to file a response to the written report. *Order of September 15, 2009 - Court Doc. No. 14*. The order advised Duncan that his failure to respond to the defendants’ written report would be treated by the court **“as an abandonment of the claims set forth in the complaint and as a failure to prosecute this action.”** *Id.* at 1 (emphasis in original). Additionally, the order **“specifically cautioned [the plaintiff] that [his failure] to file a**

response in compliance with the directives of this order” would result in the dismissal of this civil action. *Id.* The time allotted Duncan for filing a response in compliance with the directives of this order expired on October 7, 2009. As of the present date, Duncan has failed to file a requisite response in opposition to the defendants’ written report. In light of the foregoing, the court concludes that this case should be dismissed.

The court has reviewed the file in this case to determine whether a less drastic measure than dismissal is appropriate. After such review, it is clear that dismissal of this case without prejudice is the proper course of action. Duncan is indigent. Thus, the imposition of monetary or other punitive sanctions against him would be ineffectual. Additionally, Duncan has exhibited a lack of deference for this court and its authority as he has failed to comply with the directives of the orders entered in this case. It is therefore apparent that any additional effort by this court to secure Duncan’s compliance would be unavailing. Consequently, the court concludes that the plaintiff’s abandonment of his claims, his failure to comply with the orders of this court and his failure to properly continue prosecution of this cause of action warrant dismissal of this case.

CONCLUSION

For the foregoing reasons, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice. It is further

ORDERED that on or before October 29, 2009 the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge’s Recommendation to which the party is objecting. Frivolous, conclusive

