

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

ANDREW CAREY, #221869,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 3:11-CV-690-SRW
	)	[WO]
	)	
JAMES CARLTON, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION**

This cause of action is pending before the court on a 42 U.S.C. § 1983 complaint filed by Andrew Carey ["Carey"], a state inmate, on August 25, 2011. In his complaint, Carey challenges a disciplinary lodged against him for fighting without a weapon during his confinement at the Alexander City Community Work Center and his subsequent transfer to a more secure correctional facility.

Pursuant to the orders of this court, the defendants filed a written report, supported by relevant evidentiary materials including affidavits and prison disciplinary records, in which they address the claims for relief presented by Carey. The report and evidentiary materials refute the allegations presented in the instant cause of action. Specifically, the undisputed evidentiary materials indicate the defendants subjected Carey to the challenged disciplinary action solely due to his involvement in a fight with another inmate. These documents further demonstrate that Carey's transfer from community custody occurred due

to his behavior, including the fight with another inmate and a prior disciplinary for consumption of alcohol. After reviewing the defendants' written report, the court issued an order directing Carey to file a response to arguments set forth by the defendants. *Order of November 28, 2011 - Doc. No. 17*. The order advised Carey 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 Carey for filing a response in compliance with the directives of this order expired on January 30, 2012. As of the present date, Carey has failed to file a 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 is the proper course of action. Carey is an indigent inmate. Thus, the imposition of monetary or other punitive sanctions against him would be ineffectual. Additionally, Carey 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 his 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.

A separate order will accompany this memorandum opinion.

DONE, this 16<sup>th</sup> day of February, 2012.

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