

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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|--|---|--------------------------------------|
| MAURICE LAMONT SEARS, # 216192, | * | |
| | * | |
| Plaintiff, | * | |
| | * | |
| vs. | * | CIVIL ACTION NO.11-00719-KD-B |
| | * | |
| ANTHONY WILLIAMS, | * | |
| | * | |
| Defendant. | * | |

ORDER

Plaintiff, an Alabama prison inmate proceeding *pro se* and *in forma pauperis*, filed a complaint under 42 U.S.C. § 1983. The gist of Sears' claim is that on May 28, 2011, while Sears was incarcerated at Fountain Correctional Center ("Fountain"), Defendant Anthony Williams, assisted by Officer Kennkel¹, assaulted Sears by slamming him into the concrete repeatedly, choking and hitting him, and pointing a loaded 12 gauge shotgun at him while threatening to kill him. (Doc. 12). Sears alleges that he suffered injuries to his head and neck as well as psychological and mental injuries.

After screening Sears' complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), the undersigned recommended that his claims against Defendants White, Meyer, Hetrick, Mosley, Thomas, Bentley, and the Alabama Personnel Department be dismissed with

¹ Plaintiff did not name Officer Kennkel as a defendant in this suit.

prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii), and that his claim against Defendant Anthony Williams proceed. (Doc. 18). The report and recommendation was adopted as the order of the Court on February 25, 2013. (Docs. 24, 25).

Subsequent thereto, the Court took steps to serve Defendant Williams. (Docs. 31, 32, 33). When attempts to serve Williams by mail failed, the Court directed the Marshal's Office to personally serve Williams. (Doc. 37). On November 25, 2013, the Marshal's Office notified the Court that the summons and complaint had been left with Adrian Williams, who identified himself as Defendant's brother who was living with Defendant at Defendant's address. (Doc. 39). On February 3, 2014, Defendant Williams executed and filed with the Court a Waiver of Service form. (Doc. 40). Notwithstanding, Williams has not filed an answer nor otherwise responded to Sears' complaint. Currently pending before the Court is Sears' Declaration for Entry of Default. (Doc. 43). Sears seeks the entry of a default because Williams has failed to respond to his complaint. (Id.).

The undersigned observes, as a preliminary matter, that this civil action is subject to the Prison Litigation Reform Act of 1995 ("PLRA"). Unlike typical civil cases, under the PLRA, "defendants do not have to respond to a complaint covered by the PLRA until required to do so by the court, and waiving the right to reply does not constitute an admission of the allegations in

the complaint.” Jones v. Bock, 549 U.S. 199, 213-14, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007); Green v. Lafourche Parish Detention Center, 2013 U.S. Dist. LEXIS 69173, at *2 (E.D. La. Apr. 18, 2013) (because the court never entered an order directing the defendants to respond to the complaint, they were not in default); 42 U.S.C. § 1997e(g) (1).

Accordingly, because the Court has not previously issued an order directing Williams to file an answer, Sears’ motion is **DENIED** without prejudice. Additionally, in light of the fact that the Marshal’s Office left a copy of the summons and complaint at Williams’ residence with a person of suitable age, that Williams thereafter executed and mailed to the Court a Waiver of Service form, and that over five months later, Williams has not filed an answer or otherwise responded to Sears’ complaint, the undersigned finds it appropriate to **ORDER** Defendant Anthony Williams to file an answer to Sears’ complaint by **July 31, 2014**. Williams is cautioned that failure to timely respond to this order will result in the entry of default against him.

The Clerk is directed to send the instant order to Defendant Williams at his address on file via certified mail and regular mail.

DONE this **11th** day of **July, 2014**.

/s/ Sonja F. Bivins
UNITED STATES MAGISTRATE JUDGE