

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

VICTOR CLAYE BARNES,)	
 AIS # 00313583,)	
)	
Petitioner,)	
)	
vs.)	CIV. ACT. NO. 1:21-cv-361-TFM-N
)	
CHRISTOPHER GORDY, et al.,)	
)	
Respondents.)	

MEMORANDUM OPINION AND ORDER

On November 23, 2021, the Magistrate Judge entered a report and recommendation which recommends this action be dismissed without prejudice for failure to prosecute and to comply with the court’s orders. *See* Doc. 8. No objections were filed.

Fed. R. Civ. P. 41(b) authorizes dismissal of a complaint for failure to prosecute or failure to comply with a court order or the federal rules. *Gratton v. Great Am. Commc ’ns*, 178 F.3d 1373, 1374 (11th Cir. 1999). Further, such a dismissal may be done on motion of the defendant or *sua sponte* as an inherent power of the court. *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1337 (11th Cir. 2005). “[D]ismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Vil v. Perimeter Mortg. Funding Corp.*, 715 F. App’x 912, 915 (quoting *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989)). “[E]ven a non-lawyer should realize the peril to [his] case, when [he] . . . ignores numerous notices” and fails to comply with court orders. *Anthony v. Marion Cty. Gen. Hosp.*, 617 F.2d 1164, 1169 (5th Cir. 1980); *see also Moon*, 863 F.2d at 837 (As a general rule, where a litigant has been forewarned, dismissal for failure to obey a court order is not an abuse of discretion.). Therefore, the Court

finds it appropriate to exercise its “inherent power” to “dismiss [Plaintiff’s claims] *sua sponte* for lack of prosecution.” *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); *see also Betty K Agencies, Ltd.*, 432 F.3d at 1337 (describing the judicial power to dismiss *sua sponte* for failure to comply with court orders).

Since the filing of his original petition under 28 U.S.C. § 2254 on June 25, 2021, 2021, there has been no additional action by the petitioner despite at least two orders from this Court to pay the filing fee or a motion to proceed *in forma pauperis* as well as amend the petition. *See* Docs. 6, 7.

Accordingly, after due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge is **ADOPTED** and this action is **DISMISSED without prejudice** for failure to prosecute and obey the Court’s orders. The Court also finds that Barnes is not entitled to either a Certificate of Appealability or to appeal *in forma pauperis*.

Final judgment shall issue separately in accordance with this order and Fed. R. Civ. P. 58.

DONE and **ORDERED** this 26th day of January, 2022.

/s/Terry F. Moorner
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE