

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

JEROME JONES

PLAINTIFF

V.

NO: 4:08CV00024 JLH/HDY

DOC HOLLADAY *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff filed this *pro se* complaint, pursuant to 42 U.S.C. § 1983, on January 10, 2008, making claims related to a December 6, 2007, incident, in which he was involved in an altercation with another inmate, sprayed with chemical spray, and allegedly denied adequate medical care thereafter.

On November 5, 2008, Defendants Latoria Bone and Henry Browning filed a motion for summary judgment, a brief in support, and a statement of facts (docket entries #78-#80).¹ On November 10, 2008, Plaintiff was notified of his opportunity to file a response to Defendants’ motion, and given 30 days to respond (docket entry #81). That order also directed Plaintiff to file a statement of facts to be decided at trial, if he disagreed with the Defendants’ statement of facts. Plaintiff failed to respond, and, on December 30, 2009, the Court entered an order deeming Defendants’ recitation of facts to be admitted (docket entry #83). Plaintiff was also ordered to file

¹Bone and Browning are the only Defendants remaining in this lawsuit. Plaintiff’s claims against all other Defendants have been dismissed without prejudice (docket entries #14 & #31).

a responsive pleading within 20 days, and to specifically state whether he wished to continue with the case in light of his failure to respond to Defendants' motion, and the order deeming Defendants' statement of facts to be admitted. Plaintiff was also advised that his failure to respond would result in the recommended dismissal of his complaint.²

More than 20 days has now passed, and Plaintiff has not responded to the Court's order. Under these circumstances, the Court concludes that Plaintiff's complaint should be dismissed without prejudice for failure to comply with the Court's order, and for failure to prosecute. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with the Court's order, and failure to prosecute.
2. All pending motions be DENIED AS MOOT.
3. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action be considered frivolous and not in good faith.

DATED this 23 day of January, 2009.



UNITED STATES MAGISTRATE JUDGE

²Previous orders have been entered by United States Magistrate Judge Jerry W. Cavaneau. However, on January 15, 2009, the case referral was reassigned to the undersigned (docket entry #85).

