

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

TYRONE ALLEN ELLIS

PLAINTIFF

v.

Civil No. 10-1080

CIRCUIT JUDGE LARRY CHANDLER;
PROSECUTING ATTORNEY DAVID BUTLER;
DAVID TALLEY, JR., Public Defender;
PROSECUTING ATTORNEY RYAN PHILLIPS;
and CAPTAIN TRUMAN YOUNG,
Columbia County Detention Facility

DEFENDANTS

ORDER

Now on this 28th day of February, 2011, comes on for consideration the **Report And Recommendation Of The Magistrate Judge** (document #4). The Court, being well and sufficiently advised, finds and orders as follows:

1. The Report and Recommendation (R&R) under consideration is dated January 25, 2011, and there does not appear to be any objection or any other response to it by either the plaintiff or any defendant.

The R&R notes that plaintiff's complaint was provisionally filed on December 15, 2010; that plaintiff was directed to submit a complete *in forma pauperis* (IFP) application or pay the \$350 filing fee by January 11, 2011; and that, as of January 25, 2011 (the date of the R&R), plaintiff had not complied with the Court's directions. Accordingly, the Magistrate Judge recommended the case be dismissed based on plaintiff's failure to obey an order of the Court and failure to prosecute this action.

2. While considering the January 25, 2011, R&R during the fourteen (14) day period allotted to the parties in which to make any written objections they might have to the R&R, it came to the Court's attention that, on January 31, 2011, a Notice of Change of Address was

docketed in this case. This pleading -- prepared and filed by plaintiff -- noted that he had been recently transferred from the Columbia County Detention Facility to a facility within the Arkansas Department of Corrections.

Moreover, on February 16, 2011, and before this Court had opportunity to act on the R&R, an application by plaintiff to proceed *in forma pauperis* was docketed.

The foregoing happenings occurred, of course, after the Magistrate Judge had submitted the R&R to this Court for consideration.

3. In light of the foregoing, it would appear that a change in plaintiff's address likely affected the timeliness of his pleadings and his ability to comply with the Court's orders. Accordingly, the Court will decline to accept and act on the R&R's recommendation that plaintiff's cause be dismissed.

4. The plaintiff is reminded that he is obliged to keep the Court informed at all times as to his current address and contact information and that any future instances where he claims not to have timely received Court Orders will most likely not be accepted nor his failures to comply excused.

5. The Court thanks the Magistrate Judge for the R&R but, for reasons mentioned above, declines to accept his recommendation to dismiss plaintiff's case.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE