

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

ROY CHESTER WISE

PLAINTIFF

v.

Civil No. 4:08-cv-04044

DANNY RUSSELL, Sheriff,
Little River County, Arkansas

DEFENDANT

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, Roy Chester Wise, filed this case under the provisions of 42 U.S.C. § 1983. He proceeds *pro se* and *in forma pauperis*. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2007), the Harry F. Barnes, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation.

At the time he filed the case, Plaintiff was incarcerated in the Arkansas Department of Correction. Plaintiff has not communicated with the Court since he filed a supplement to the complaint on August 14, 2008 (Doc. 5). On March 9, 2009, Defendant notified the Court that mail sent to the Plaintiff had been returned as undeliverable (Doc. 10).

On April 1, 2009, a change of address (Doc. 14) was entered on Plaintiff's behalf utilizing an address Court staff obtained from Plaintiff's parole officer. On June 8, 2009, a docket entry was made noting that the mail sent to this address was returned as undeliverable marked insufficient address. Since that date, mail sent by the Court has not been returned as undeliverable.

On August 27, 2009, a show cause order was entered giving Plaintiff until September 21, 2009, to show cause why this case should not be dismissed based on his failure to prosecute this action. Plaintiff was advised that failure to respond to the show cause order would result in the summary dismissal of this case. Plaintiff was given until September 21, 2009, to respond to the

order. Plaintiff did not respond to the order. He did not seek an extension of time to respond to the order.

I therefore recommend that this case be dismissed based on the Plaintiff's failure to prosecute this action. Fed. R. Civ. P. 41(b).

The parties have ten (10) days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 24th day of September 2009.

/s/ Barry A. Bryant

HON. BARRY A. BRYANT

UNITED STATES MAGISTRATE JUDGE