

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRING DIVISION

JIMMY DON DAVIS, SR.

PLAINTIFF

v.

Civil No. 6:17-cv-06109

SHERIFF DAVID WHITE, Montgomery
County, Arkansas; FUZZ ROBINSON,
Jail Administrator; JAILER JOSE; and
JAILER BARRY

DEFENDANTS

ORDER

This is a civil rights action filed by the Plaintiff, Jimmy Don Davis, Sr., pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff's Motion to Dismiss. (ECF No. 10).

Plaintiff filed his Complaint and Application to proceed *in forma pauperis* ("IFP") on October 10, 2017. (ECF Nos. 1, 2). In his Complaint Plaintiff named Sheriff David White, Fuzz Robinson, Jailer Jose and Jailer Barry as Defendants. (ECF No. 1). Plaintiff's application to proceed IFP was granted on November 2, 2017. (ECF No. 6). That same day this Court dismissed Plaintiff's claims against Defendant Sheriff David White and all official capacity claims for failure to state a claim (ECF No. 9) and ordered service on Defendants Fuzz Robinson, Jailer Jose and Jailer Barry. To date, no Defendant has filed an answer. Plaintiff filed a Motion to Dismiss his Complaint on November 13, 2017, stating "I do not want to pursue this case against Fuzz Robins, Jose, Barry, and anyone else that was involved...I did not know that this was being done it was being done by a cell mate that pursued it without my acknowledgement." (ECF No. 10).

The Federal Rules of Civil Procedure provide an avenue for parties to voluntarily dismiss claims without prejudice. Specifically, a Plaintiff "may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. . . ." Fed. R. Civ. P. 41(a)(i). Voluntary dismissal under Rule 41(a)(1) is

without prejudice unless the notice states otherwise or the plaintiff has previously dismissed an action including the same claim in any other court. *Id.* In ordinary civil cases, a notice of dismissal that complies with this rule operates as a matter of right upon notice to the court, and permission of the court is not required. *Safeguard Business Sys., Inc. v. Hoeffel*, 907 F.2d 861, 863 (8th Cir.1990).

The Court interprets Plaintiff's Motion to Dismiss as a Notice of Voluntary Dismissal. In this case no Defendant has filed an answer. Therefore, Plaintiff may voluntarily dismiss his case at this stage as a matter of right. *Safeguard*, 907 F.2d at 863.

Accordingly, Plaintiff's Complaint should be and hereby is **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 41 (a)(i).

IT IS SO ORDERED this 16th day of November 2017.

/s/ P. K. Holmes, III

HON. P. K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE