

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

KELVIN FRAZIER,
Plaintiff,

vs.

CASE NO.: 3:07cv273/LAC/MD

JAMES MCDONOUGH,
Defendant.

ORDER

Plaintiff initiated this action through the filing of a complaint under 42 U.S.C. § 1983. Plaintiff's complaint was dismissed for failure to state a claim (doc. 6) and plaintiff appealed. (Doc. 16). The Eleventh Circuit affirmed the district court's dismissal of plaintiff's claims for compensatory and punitive damages but remanded with directions that these claims be dismissed without prejudice (doc. 43). The appellate court also vacated the district court's dismissal of plaintiff's First Amendment retaliation claim. (*Id.*) Thereafter, on June 30, 2008 this court issued a Report and Recommendation directing plaintiff to amend his complaint within thirty (30) days if he wished to pursue his First Amendment claim and seek only nominal damages (doc. 46). The plaintiff moved to stay the trial court action (doc. 47) and the district court denied the motion. (Doc. 48). Instead, on August 1, 2008 it adopted the recommendation of the undersigned, dismissed plaintiff's claims for compensatory and punitive damages and instructed plaintiff that if he wished to pursue his First Amendment claim seeking only nominal damages, that he should do so within thirty days. (Doc. 49). Plaintiff failed to timely respond or explain his inability to do so, and on September 24, 2008 this court entered an order directing plaintiff to show cause why his case should not be dismissed without prejudice due to his failure to prosecute. (Doc. 50). Plaintiff also failed to timely respond to this order or explain his inability to do so.

Prior to preparing another recommendation of dismissal in plaintiff's case, this court reviewed the docket sheet, and noted that on October 24, 2008, the clerk docketed a procedural letter from the Eleventh Circuit which indicated that the United States Supreme Court had denied certiorari in plaintiff's case, and that no further action would be taken by that court. It thus appears that plaintiff intentionally failed to respond to the orders entered by this court during the pendency of his application for certiorari. In any event, certiorari having been denied, plaintiff shall now be required to submit his amended complaint in accordance with the opinion of the Eleventh Circuit and the instructions of this court in its June 30, 2008 recommendation. Failure to do so will result in a recommendation of dismissal of this action.

Accordingly, it is ORDERED:

If plaintiff wishes to proceed with this action, he shall file an amended complaint as previously instructed within twenty days from the date of this order.

DONE AND ORDERED this 27th day of October, 2008.

/s/ *Miles Davis*

**MILES DAVIS
UNITED STATES MAGISTRATE JUDGE**