

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

NYKA O'CONNOR,
Plaintiff,

vs.

Case No. 3:09cv224/WS/EMT

M. L. CARNAHAN, et al.,
Defendants.

_____ /

ORDER

Plaintiff, an inmate proceeding pro se, initiated this action by filing a civil rights complaint pursuant to 42 U.S.C. § 1983 (Doc. 1). The filing fee has been paid in full (Doc. 5).

On November 3, 2009, the court entered an order giving Plaintiff thirty (30) days in which to file an amended complaint (Doc. 16). Upon Plaintiff's request, the court agreed to hold the matter in abeyance until January 4, 2010, by which date he was directed he must also file a notice advising the court of his continued interest in pursuing this litigation (Doc. 20). Plaintiff was advised that if he failed to respond as instructed within the time allotted, the court would assume he wished to abandon this case and thus would recommend dismissal of this action to the district court without further notice to Plaintiff. The court repeated this information to Plaintiff in its order dated December 18, 2009 (Doc. 22). When the time for Plaintiff to file a notice advising of his continued interest in pursuing this litigation elapsed with no response from Plaintiff, the court recommended dismissal of this action without prejudice for failure to comply with an order of the court and for want of prosecution (Doc. 25). On February 11, 2010, the district court adopted the recommendation (Doc. 26); the clerk entered judgment and closed the case (Doc. 27). On July 26, 2010, however, the district court granted Plaintiff's motion to set aside the order of dismissal and vacate judgment, in light of Plaintiff's representations that from October 2009 until March of 2010

he was mentally unstable, had no access to his legal materials or other property, and did not learn until June 11, 2010, that his lawsuit had been dismissed (Doc. 29). The district court also directed the clerk to return the file to the undersigned for further proceedings.

To date, Plaintiff has not complied with the court's November 3, 2009, order directing him to file an amended complaint (Doc. 16). Plaintiff therefore shall be required to file an amended complaint within thirty (30) days of the date of this order.

Accordingly, it is **ORDERED**:

1. The clerk of court is directed to forward to Plaintiff a civil rights complaint form for use in actions under 42 U.S.C. § 1983. This case number should be written on the form.
2. For Plaintiff's convenience, the clerk shall also forward to Plaintiff a copy of the court's November 3, 2009, order which contains instructions for amendment.
3. Plaintiff shall have **THIRTY (30) DAYS** in which to file an amended civil rights complaint, which shall be typed or clearly written, submitted on the court form, and marked **"Second Amended Complaint."**
4. Plaintiff's failure to submit an amended complaint as instructed will result in a recommendation of dismissal of this action.

DONE AND ORDERED this 8th day of October 2010.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY
UNITED STATES MAGISTRATE JUDGE