

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

CHARLES KYLE WILLIAMS,

PLAINTIFF,

-vs-

Case No. 5:15-cv-00336-WTH-GRJ

CAPTAIN DAVID SWAIN,

DEFENDANT.

ORDER ON SECOND REPORT AND RECOMMENDATION

This matter is before the Court on a Report and Recommendation of the Magistrate Judge, ECF No. 34, filed September 5, 2017. The Magistrate Judge recommends that this case should be dismissed for failure to follow an order of the Court.

Previously, the Magistrate Judge recommended, in ECF No. 31, that defendant's motion to dismiss, ECF No. 28, be granted on all claims of the Second Amended Complaint except the claim of retaliation in violation of the First Amendment. The Report and Recommendation also ordered the plaintiff to file, within 20 days of this Court's order accepting the Report and Recommendation, a third amended complaint "limited to Plaintiff's First Amendment claim for nominal damages against Defendant Swain." ECF No. 31 at 12.

Rather than objecting to the Report and Recommendation or waiting for this Court's order accepting the Report and Recommendation, the plaintiff immediately filed a Third Amended Complaint, ECF No. 32, which contained only the First Amendment retaliation claim. However, Paragraph VII of the Third Amended Complaint, entitled "Relief Requested", asked for "normal damages" of \$5,000 and did not contain any request for nominal damages. This was contrary to the Magistrate Judge's order.

In the interest of judicial economy, the Court accepted the Third Amended Complaint but struck Paragraph VII of that document, entitled "Relief Requested."

The Court then instructed the plaintiff as follows:

The plaintiff, if he so desires, shall within 20 days of the receipt of this Order file an amended "Relief Requested" paragraph seeking only nominal damages. Failure to file an amended "Relief Requested" paragraph, or filing of an amended "Relief Requested" paragraph that does not conform to the directive of the preceding sentence, will result in dismissal of this action with prejudice without further notice.

Plaintiff did not respond in any way, and the time for doing so has expired. The Magistrate Judge thus recommends dismissing this case for failure to follow an order of the Court, and this Court agrees. Accordingly, it is hereby

ORDERED and ADJUDGED:

1. The Report and Recommendation of the Magistrate Judge, ECF No. 34, is accepted and incorporated herein by reference.
2. The Clerk is directed to enter a judgment stating the following: "This case is dismissed without prejudice for failure to prosecute and

to follow an order of the Court.” The Clerk is directed to close the file.

DONE and ORDERED at Gainesville, Florida this 25th day of October, 2017.

A handwritten signature in blue ink, appearing to read "W. Penell Hodges", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE