

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.
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SO. DIST. OF GA.

DONALD W. TOENNIGES,
Plaintiff,

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v.

CV 311-083

BARRY HENDERSON, M.D.; CALEB
AJIBADE, M.D.; JOSE MORALES,
Warden; and TIM JONES, Deputy
Warden,

Defendants.

ORDER

On October 24, 2011, Plaintiff filed his operative Amended Complaint. (Doc. No. 8.) On December 22, 2011, Defendants moved the Court to screen Plaintiff's Amended Complaint pursuant to 28 U.S.C. § 1915A. (Doc. No. 32.) After conducting such a review, the United States Magistrate Judge entered his Report and Recommendation dated February 28, 2012 (the "R&R"), in which he reported and recommended, *inter alia*: (a) the dismissal of Plaintiff's deliberate indifference claims against Defendants Henderson and Ajibade; (b) the dismissal of Plaintiff's denial of visitation claims against Defendants Morales and Jones. (Doc. No. 40, at 13.) On April 20, 2012, after a careful *de novo* review, this Court adopted the R&R and, *inter alia*, dismissed Plaintiff's: (a) deliberate

indifference claims against Defendants Henderson and Ajibade; and (b) denial of visitation claims against Defendants Morales and Jones. (Doc. No. 48, at 3-4.) This case then proceeded along on Plaintiff's then-sole remaining claim of retaliatory transfer against Defendant Morales in his individual capacity until February 5, 2014, when Plaintiff filed a Stipulation of Dismissal seeking the dismissal of this case with prejudice. (Doc. No. 104.) Accordingly, on February 7, 2014, the Court dismissed Plaintiff's remaining claim against Defendant Morales with prejudice and closed this case. (Doc. No. 105.)

On March 7, 2016, the Court received Plaintiff's Notice of Appeal to the Eleventh Circuit. (Doc. No. 106.) The Eleventh Circuit subsequently affirmed this Court's dismissal of Plaintiff's deliberate indifference claims against Defendants Henderson and Ajibade and denial of visitation claims against Defendants Morales and Jones, but remanded with instructions to permit Plaintiff an opportunity to amend the aforementioned claims in light of the policies of "construing *pro se* complaints liberally" and "liberally permitting amendments to facilitate determination of claims on the merits." (See Toenniges v. Warden, No. 14-11009 (11th Cir. Nov. 28, 2016), Doc. No. 118, at 6-7.) On January 4, 2017, this Court adopted the Eleventh Circuit's judgment as its own. (Doc. No. 120.) On January 6, 2017, in accordance with the

Eleventh Circuit's instructions, this Court granted Plaintiff until February 3, 2017 to file his amended complaint. (Doc. No. 121.) As explicitly noted by the Court in that Order, Plaintiff's failure to file his amended complaint by February 3, 2017 could "result in the dismissal of this action with prejudice without further notice." (Id. at 3.)

To date, Plaintiff has failed to: (a) file his amended complaint; (b) seek an extension of time to do so; or (c) otherwise communicate to the Court his intent to pursue this case. Accordingly, upon due consideration, **IT IS HEREBY ORDERED** that this case is **DISMISSED WITH PREJUDICE**. The Clerk is directed to **TERMINATE** all motions and deadlines and **CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 14th day of February, 2017.


UNITED STATES DISTRICT JUDGE