

THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MAURICE SHELTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 3:20-cv-01150-GCS
	)	
RICHARD WATSON,	)	
	)	
Defendant.	)	

MEMORANDUM & ORDER

SISON, Magistrate Judge:

This matter is before the Court *sua sponte* for case management purposes. Plaintiff Shelton’s case challenges the conditions of his pretrial confinement in St. Clair County Jail pursuant to 42 U.S.C. §1983. (Doc. 1). The Initial Scheduling Order for the case issued by Judge J. Phil Gilbert on March 31, 2022, mistakenly noted that Plaintiff had been assessed and paid a \$402.00 filing fee. (Doc. 42). The Revised Scheduling Order issued by the Court on October 17, 2022, corrected this error and indicated that Plaintiff should pay his partial filing fee of \$8.85 on or before December 12, 2022. (Doc. 76). Plaintiff failed to do so. On December 28, 2022, the Court issued a Show Cause Order directing Plaintiff to pay his partial filing fee of \$8.85 or to demonstrate that he did not have the means to pay this amount on or before January 11, 2023. (Doc. 80). Plaintiff was warned that failure to follow the Show Cause Order may result in the dismissal of his case. *Id.*

Federal Rule of Civil Procedure 41(b) provides that “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” In dismissing a case for lack of prosecution, the Seventh Circuit has indicated that a district court commits legal error “when it dismisses a suit ‘immediately after the first problem, without exploring other options or saying why they would not be fruitful.’” *Sroga v. Huberman*, 722 F.3d 980, 982 (7th Cir. 2013)(quoting *Johnson v. Chi. Bd. of Educ.*, 718 F.3d 731, 732-733 (7th Cir. 2013)). The Seventh Circuit has suggested that in addition to warning the plaintiff, the court must consider essential factors such as “the frequency and egregiousness of the plaintiff’s failure to comply with other deadlines, the effect of the delay on the court’s calendar, and the prejudice resulting to the defendants.” *Id.* (citing *Kruger v. Apfel*, 214 F.3d 784, 786-787 (7th Cir. 2000)).

As of this date, Plaintiff has failed to respond to the Court’s Show Cause Order. While the Court is cognizant of the fact that Plaintiff is proceeding pro se and was recently released on parole from Menard Correctional Center, those difficulties do not excuse Plaintiff from complying with court-imposed deadlines. *See* IDOC Offender Search, <https://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx> (last visited January 18, 2023); (Doc. 79). Further, the Court has approximately 90 cases on its docket, and if the Court permits this case to drag on further waiting for Plaintiff to respond, it will detrimentally impact the efficient and timely handling of its other cases. Accordingly, the Court **DISMISSES without prejudice** this action pursuant to Rule 41(b). *See* FED. R.

CIV. PROC. 41(b); *see generally James v. McDonald's Corp.*, 417 F.3d 672, 681 (7th Cir. 2005). The case is **CLOSED**, and the Clerk of Court is **DIRECTED** to enter judgment accordingly.

In an abundance of caution, and noting Plaintiff's *pro se* status, the Court informs Plaintiff as follows. Plaintiff has two means of contesting this Order: he may either request this Court review this Order, or he may appeal the Order to the Seventh Circuit Court of Appeals.

If Plaintiff chooses to request this Court to review the Order, he should file a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). Plaintiff *must* file the motion within twenty-eight (28) days of the entry of judgment; the deadline *cannot* be extended. *See* FED. R. CIV. PROC. 59(e); 6(b)(2). The motion must also comply with Rule 7(b)(1) and state with sufficient particularity the reason(s) that the Court should reconsider the judgment. *See Elustra v. Mineo*, 595 F.3d 699, 707 (7th Cir. 2010); *Talano v. Northwestern Med. Faculty Foundation, Inc.*, 273 F.3d 757, 760 (7th Cir. 2001). *See also Blue v. Hartford Life & Acc. Ins. Co.*, 698 F.3d 587, 598 (7th Cir. 2012)(stating that a party must establish either manifest error of law or fact, or that newly discovered evidence precluded entry of judgment in order to prevail on a Rule 59(e) motion) (citation and internal quotation marks omitted).

So long as the Rule 59(e) motion is in proper form and timely submitted, the 30-day clock for filing a notice of appeal will be tolled. *See* FED. R. APP. PROC. 4(a)(4). The clock will start anew once the undersigned rules on the Rule 59(e) motion. *See* FED. R. APP.

PROC. 4(a)(1)(A), (a)(4), (a)(4)(B)(ii). However, if the Rule 59(e) motion is filed outside the 28-day deadline or “completely devoid of substance,” the motion will not toll the time for filing a notice of appeal; it will expire 30 days from the entry of judgment. *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 826 (7th Cir. 2014); *Martinez v. Trainor*, 556 F.2d 818, 819–820 (7th Cir. 1977). Again, this deadline can be extended only on a written motion by Plaintiff showing excusable neglect or good cause.

In contrast, if Plaintiff chooses to go straight to the Seventh Circuit, he must file a notice of appeal from the entry of judgment or order appealed from *within 30 days*. See FED. R. APP. PROC. 4(a)(1)(A) (emphasis added). The deadline can be extended for a short time only if Plaintiff files a motion showing excusable neglect or good cause for missing the deadline and asking for an extension of time. See FED. R. APP. PROC. 4(a)(5)(A), (C). See also *Sherman v. Quinn*, 668 F.3d 421, 424 (7th Cir. 2012)(explaining the good cause and excusable neglect standards); *Abuelyaman v. Illinois State Univ.*, 667 F.3d 800, 807 (7th Cir. 2011)(explaining the excusable neglect standard).

Plaintiff may appeal to the Seventh Circuit by filing a notice of appeal in this Court. See FED. R. APP. PROC. 3(a). The current cost of filing an appeal with the Seventh Circuit is \$505.00. The filing fee is due at the time the notice of appeal is filed. See FED. R. APP. PROC. 3(e). If Plaintiff cannot afford to pay the entire filing fee up front, he must file a motion for leave to appeal *in forma pauperis* (“IFP motion”). See FED. R. APP. PROC. 24(a)(1). The IFP motion must set forth the issues Plaintiff plans to present on appeal. See FED. R. APP. PROC. 24(a)(1)(C).

**IT IS SO ORDERED.**

**DATED: January 19, 2023.**

*Gilbert C. Sison* Digitally signed  
by Judge Sison 2  
Date: 2023.01.19  
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**GILBERT C. SISON**  
**United States Magistrate Judge**