

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

SAMMY STEVEN PRICE

CIVIL ACTION

VERSUS

NO. 15-5461

**ORLEANS PARISH SHERIFF'S OFFICE,
SHERIFF MARLIN GUSMAN, NIOMI JONES
"CITY ATTORNEY," MUNICIPAL COURT
SEC. C, T.D.C. ACTING WARDEN CAPT.
WASHINGTON, CAPT. RHODES, SERG. TAHO**

SECTION "H" (4)

ORDER AND REASONS

The plaintiff, Sammy Steven Price, has filed a **Motion to Reschedule a *Spears* Hearing (Rec. Doc. No. 25)**, in which he requests that the Court reset the *Spears* Hearing scheduled for January 7, 2016, which was later cancelled. Price alleges that he was released from prison and now is residing in a rehabilitation facility in Opelousas, Louisiana. He asserts that he is now in a better position to prosecute this civil action.¹ Price has not sought to amend or supplement his complaint since he has been released from prison.

Price filed the captioned *pro se* and *in forma pauperis* complaint under 42 U.S.C. § 1983 while he was a prisoner incarcerated in the Orleans Parish Prison System.² Under the regular screening of the case, the Court initially scheduled a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) for January 7, 2016.³ Upon learning that Price had been released from prison, the Court cancelled the *Spears* Hearing.⁴

¹Price also requested that he be provided with a copy of his original complaint. The Pro Se Unit in the Clerk of Court's Office has provided Price with a copy of that pleading.

²Rec. Doc. No. 8.

³Rec. Doc. No. 9.


⁴Rec. Doc. No. 20.

The *Spears* Hearing was promulgated by the United States Fifth Circuit Court of Appeals for the purpose of allowing a prisoner-plaintiff the opportunity to further explain his factual allegations and for the Court to ascertain the legal basis for the claims asserted. *Spears*, 766 F.2d at 181-82. The information received at the hearing is considered to be in the nature of an amended complaint or a more definite statement under Fed. R. Civ. P. 12(e) to assist the Court in conducting its review of the prisoner complaint for frivolousness. *Id.*; *see also, Wilson v. Barrientos*, 926 F.2d 480, 482 (5th Cir. 1991). The *Spears* Hearing procedure was encouraged by the Fifth Circuit as a “tool in our judicial workshop” to sift through the “mountains” of prisoner-filed suits in an effort to separate the frivolous from the potentially meritorious complaints. *Spears*, 766 F.2d at 182.

The *Spears* Hearing practice was directed to suits being prosecuted by prisoners. *Id.* Price is no longer a prisoner subject to the limited resources and confines of a jail facility. As such, this civil action can proceed through the normal course of review under 28 U.S.C. § 1915, § 1915A, 42 U.S.C. § 1915(g), and the Federal Rules of Civil Procedure as applicable. Accordingly,

IT IS ORDERED that Price’s **Motion to Reschedule a *Spears* Hearing (Rec. Doc. No. 25)** is **DENIED**.

New Orleans, Louisiana this 17th day of February, 2016.



KAREN WELLS ROBY
UNITED STATES MAGISTRATE JUDGE