

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RODERICK MCCLAM

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07CV899-RHW

JEFFERY BUNCH et al

DEFENDANTS

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Jeffery Bunch's [41] Motion to Dismiss or for Summary Judgment. Plaintiff, proceeding pro se and in forma pauperis, filed a 42 U.S.C. § 1983 prisoner civil rights complaint alleging, inter alia, a failure to protect from assault by other inmates. The only issue remaining before the Court is the failure to protect claim against Defendant Bunch. All other claims and Defendants have been dismissed. On May 16, 2008, Defendant filed a [37] Motion to Deem Admissions Admitted and/or to Compel Discovery. In light of Plaintiff's failure to respond to the motion, the Court entered on June 23, 2008, an [38] Order to Show Cause why Defendant's [37] Motion to Deem Admissions Admitted and/or to Compel Discovery should not be granted as unopposed. Plaintiff's response to the show cause order was due on July 8, 2008. Plaintiff failed to respond to the Court's show cause order. On July 24, 2008, the Court denied Defendant's motion to deem admissions as admitted, but granted Defendant's motion to compel and set a deadline of August 14, 2008, for Plaintiff to serve responses to Defendant's request for admissions and to serve discovery responses. The Court cautioned Plaintiff at that time that a failure to serve responses on Defendant by the August 14th deadline may result in the request for admissions being admitted, and may result in the dismissal of Plaintiff's lawsuit.

On August 29, 2008, Defendant filed the instant [41] Motion to Dismiss or for Summary

Judgment. In the motion, Defendant argues that the lawsuit should be dismissed for failure to prosecute, or summary judgment should be granted on the failure to protect claim. As of the date of this Memorandum Opinion and Order, Plaintiff still has not served discovery responses. Nor has Plaintiff filed a response in opposition to Defendant's Motion to Dismiss or for Summary Judgment. In fact, Plaintiff has failed to file any pleadings or communicate with the Court since the March 5, 2008, screening hearing. Based on the foregoing, the Court finds that Plaintiff has failed to prosecute his claim. Accordingly, Plaintiff's lawsuit should be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's [41] Motion to Dismiss for failure to prosecute is GRANTED, and that Defendant's Motion for Summary Judgment is thereby rendered MOOT.

SO ORDERED, this the 23rd day of October, 2008.

s/ Robert H. Walker

UNITED STATES MAGISTRATE JUDGE