

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

VARTAURSE CORNELIOUS PENNS

PLAINTIFF

v.

CAUSE NO. 1:16CV92-LG-RHW

WILLIAM JORDAN, et al.

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
DISMISSING ACTION**

This cause comes before the Court on the [58] Report and Recommendation of United States Magistrate Judge Robert H. Walker. On March 10, 2016, Plaintiff Vartaurse Cornelious Penns filed a Complaint pursuant to 42 U.S.C. § 1983 against multiple defendants alleging violations of his constitutional rights. On December 8, 2016, this cause came before Magistrate Judge Walker for a duly noticed omnibus hearing, but Penns failed to appear at the hearing. Having reviewed the Magistrate Judge's Report and Recommendation and the record in this action, the Court agrees with Magistrate Judge Walker that this action should be dismissed based on Penns' failure to appear at the hearing.

The record reflects that Penns was sent a copy of the notice of hearing at his last known address of record at Stone County Regional Correctional Facility located in Wiggins, Mississippi. Moreover, the Court advised Penns in writing on multiple occasions of his responsibility to keep the Court apprised of any address changes. (See ECF Nos. 3, 7, 8, 14, 18, 19, 21). Nonetheless, Penns did not appear for the December 8 hearing. At the hearing, Magistrate Judge Walker's deputy clerk "stated for the record that on December 2, 2016, she had received notification from

Captain Rogers of the Stone County Regional Correctional Facility that Penns had been paroled October 3, 2016.” (See Rep. & Rec. 2, ECF No. 58). Additionally, the record shows that Penns has not updated his address with the Court since August 2016 and has not otherwise filed anything with the Court since September 2016.

Accordingly, on December 8, Magistrate Judge Walker recommended that this Court dismiss this action for Penns’ failure to appear at the omnibus hearing. Penns has not objected to or otherwise responded to Magistrate Judge Walker’s Report and Recommendation, and the time for doing so has now expired.

Where no party has objected to the Magistrate Judge’s Report and Recommendation, the Court need not conduct a de novo review of it. *See* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). In such cases, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *See, e.g.*, *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court is of the opinion that Magistrate Judge Walker’s Report and Recommendation is neither clearly erroneous nor contrary to law. Accordingly, the Court finds that the [58] Report and Recommendation should be adopted as the opinion of this Court, and that this matter should be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that the [58] Report and Recommendation of United States Magistrate Judge Robert H. Walker entered

in this cause should be, and hereby is, adopted as the findings of this Court, and that Plaintiff's claims against Defendants are **DISMISSED**. A separate judgment will be entered.

SO ORDERED AND ADJUDGED this the 29th day of December, 2016.

s/l Louis Guirola, Jr.
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE