

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AARON LEE MCCAIN,

Plaintiff

v.

SHERIFF JOSEPH LOMBARDO, *et al.*,

Defendants

Case No. 2:21-cv-01317-APG-EJY

ORDER

This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by an individual who has now been released from the custody of the Clark County Detention Center.

On July 22, 2021, Magistrate Judge Youchah ordered plaintiff Aaron Lee McCain to file a fully complete application to proceed *in forma pauperis* by a non-prisoner or pay the full filing fee of \$402 on or before August 25, 2021. ECF No. 4 at 1. The August 25, 2021 deadline has now expired, and McCain has not filed that application, paid the full \$402 filing fee, or otherwise responded to the order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of

1 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal
2 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.
3 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for such reasons, the court must consider
5 several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's
6 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
7 favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.
8 *See Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
9 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 Here, the first two factors (the public's interest in expeditiously resolving this litigation
11 and my interest in managing the docket) weigh in favor of dismissal. The third factor (risk of
12 prejudice to the defendants) also weighs in favor of dismissal because a presumption of injury
13 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
14 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
15 factor (public policy favoring disposition of cases on their merits) is greatly outweighed by the
16 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that the
17 failure to obey the court's order will result in dismissal satisfies the "consideration of
18 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,
19 779 F.2d at 1424. Judge Youchah's order expressly stated "that if Plaintiff does not timely
20 comply with this order, this case will be subject to dismissal without prejudice for Plaintiff to file
21 a new case with the Court when Plaintiff is either able to file a fully complete application to
22 proceed *in forma pauperis* by a non-prisoner or pays the full \$402 filing fee." Thus, McCain had
23

1 adequate warning that dismissal would result from his noncompliance with Judge Youchah's
2 order.

3 I THEREFORE ORDER that this action is dismissed without prejudice based on plaintiff
4 Aaron Lee McCain's failure to file a fully complete application to proceed *in forma pauperis* by
5 a non-prisoner or pay the full \$402 filing fee in compliance with this court's order.

6 I FURTHER ORDER the Clerk of Court to close the case and enter judgment
7 accordingly. No other documents may be filed in this now-closed case.

8 DATED: September 7, 2021.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE