

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES EDWARD GOODEN, Jr.,

Plaintiff,

vs.

No. CIV 16-0934 JB/SCY

NEW MEXICO DEPARTMENT OF
CORRECTIONS; HEALTHCARE
PROVIDER; CHARLES BIVEN, Dr., and
JOHN DELORENZO, Physical Therapist,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL WITHOUT PREJUDICE

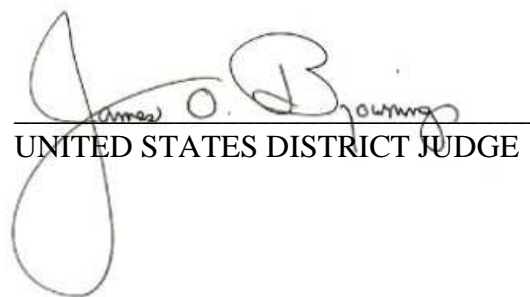
THIS MATTER comes before the Court on the Court's Memorandum Opinion and Order, filed February 24, 2017 (Doc. 37)("MOO"), dismissing without prejudice the Plaintiff's Amended Prisoner's Civil Rights Complaint, filed December 13, 2016 (Doc. 27), for failure to state a claim upon which relief can be granted under 28 U.S.C. § 1915(e)(2). The Court afforded Plaintiff James Edward Gooden thirty days, from the date of the MOO's entry, to file an amended complaint. See MOO at 15. The Court notified Gooden that "[f]ailure to file an amended complaint that complies with the standards set forth [in the Court's MOO] may result in the dismissal of this action without further notice." MOO at 13.

Gooden's amended complaint was due on or before March 27, 2017. As of this date, however, Gooden has not filed an amended complaint or otherwise responded to the Court's February 24, 2017, MOO. Rule 41(b) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action sua sponte "[i]f the plaintiff fails to prosecute or comply with these rules or a court order." Fed. R. Civ. P. 41(b). See Olsen v. Mapes, 333 F. 3d 1199, 1204 n.3 (10th Cir. 2003)(noting that rule 41(b) of the Federal Rules of Civil Procedure "has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or

comply with the rules of civil procedure or court's orders"). Because Gooden has not filed an amended complaint in compliance with the Court's MOO, the Court will, pursuant to rule 41(b), dismiss this action without prejudice.

In letters dated January 20, 2017, and January 26, 2017, Gooden informed this Court that he would be released from Central New Mexico Correctional Facility on March 17, 2017, and that, after that date, all future correspondence should be sent to him at 3300 Ceasar Chavez Blvd, Clovis, New Mexico 88101. See Letter, filed January 20, 2017 (Doc. 34); Letter, filed January 30, 2017 (Doc. 36). The Court will direct the Clerk of the Court to update Gooden's mailing address on the docket and also send a copy of this Memorandum Opinion and Order and the Final Judgment to Gooden's new mailing address.

IT IS ORDERED that: (i) this action is dismissed without prejudice, and judgment will be entered; and (ii) the Clerk of the Court is directed to change Gooden's mailing address to 3300 Ceasar Chavez Blvd, Clovis, New Mexico 88101 and to also send a copy of this Memorandum Opinion and Order and of the Final Judgment to Gooden's new mailing address.



UNITED STATES DISTRICT JUDGE

Parties:

James Edward Gooden, Jr.
Los Lunas, New Mexico

Plaintiff pro se

Charles Biven, Dr.
John Delorenzo, Physical Therapist

Defendants