

DISTRICT COURT OF THE UNITED STATES  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:14-cv-182-FDW

MICHAEL S. HARPER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TERRY LEMON, )  
 FNU WHITLEY, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**ORDER**


**THIS MATTER** is before the Court on a status review. Plaintiff filed this action on April 14, 2014, pursuant to 42 U.S.C. 1983, alleging excessive force was used against him at Lanesboro Correctional Institution, naming “FNU Whitley” as one of two Defendants. Defendant FNU Whitley is alleged to have been employed as a correctional officer at Lanesboro Correctional Institution at all relevant times. On June 10, 2015, this Court received an unexecuted summons as to Defendant FNU Whitley. (Doc. No. 14). The unexecuted summons, which the U.S. Marshal attempted to serve on FNU Whitley, states “unknown first name and currently no officers employed at Lanesboro CI with the last name Whitley.” (Id. at 1).

On August 19, 2015, this Court entered an order allowing Plaintiff to seek limited discovery from the North Carolina Attorney General for the sole purpose of seeking information as to whether a correctional officer with the last name of Whitley was employed at Lanesboro at the time of the alleged excessive force incident giving rise to this action. (Doc. No. 21). The Court noted in its order that if Plaintiff did not seek such discovery within 30 days of this Order, the Court would likely dismiss the action against Defendant FNU Whitley based on Plaintiff’s failure

to prosecute this action against FNU Whitley.

The Court has not received any indication from Plaintiff as to whether he has obtained the name of the person identified in the Complaint as “FNU Whitley.” Plaintiff shall notify the Court, within ten days of this Order, as to the status of his claim as to this one Defendant and what discovery, if any, he has received from the North Carolina Attorney General as to the identity of this person. If Plaintiff fails to respond, “FNU Whitney” will be dismissed as a named Defendant in this action.

**IT IS SO ORDERED.**

  
Frank D. Whitney  
Chief United States District Judge

