

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STERLING PETTWAY, III,)	CASE NO.1:19CV1044
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	
)	
DETECTIVE LAWRENCE SMITH,)	OPINION AND ORDER
ET AL.,)	
)	
Defendant.)	

CHRISTOPHER A. BOYKO, J:

This matter is before the Court on Defendants Rekha Ujla’s and Lawrence Smith’s motions to dismiss (ECF Doc. 28 and ECF Doc. 29) for failure to prosecute. On August 4, 2020, the Magistrate Judge issued his Report and Recommendation (“R & R”), recommending the Court grant Defendants’ motions and dismiss the case with prejudice. Plaintiff has failed to file any objections to the Magistrate Judge’s R & R. Therefore, the Court adopts the same, grants Defendants’ motions to dismiss and dismisses the above-captioned case with prejudice for failure to prosecute.

A party's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to review the matter independently. *Thomas v. Arn*, 474 U.S. 140, 149, 106 S.Ct. 466, 88

L.Ed.2d 435 (1985).

A review of the docket and the R & R reveals that Pettway filed his Complaint on May 9, 2019, but has done little since then to prosecute his claims. According to the Magistrate Judge, Pettway's prosecution of his claims has been "sporadic and dilatory." The R & R describes Pettway's failures as follows:

On May 13, 2020, I issued a report and recommendation that the Court deny Pettway's motion for judgment on the pleadings and deny Defendant Ujla's motion to dismiss for failure to prosecute. ECF Doc. 24. I also scheduled a telephone conference for May 27, 2020 and warned Pettway that his failure to participate would result in my recommendation that the court dismiss his case. ECF Doc. 25. I also issued an order instructing Pettway on completing service on defendants, Robert Taylor and Janice Palechka. ECF Doc. 26. Despite these notices and warnings to Pettway, he has failed to prosecute the case. He did not participate in the May 27th telephone conference (ECF Doc. 27) and did not complete service on the individuals named as defendants in his case. (See ECF Docket).

Pettway has failed to object to my report and recommendation; failed to participate in the court scheduled telephone conference; failed to file any explanation for missing the telephone conference; and failed to file any response to the pending motions to dismiss. In the same way, Pettway has failed to complete service of process upon other named defendants. And, Pettway has been duly notified that his failure to prosecute this case would likely result in a dismissal of the action. (ECF Doc. 25.)

The Magistrate Judge previously recommended, and the Court agreed, to deny a prior Motion to Dismiss by Defendant Ujla for failure to prosecute in light of Pettway's pro se status. However, the reprieve did not spur Pettway to action.

Fed. R. Civ. P. 41(b) reads;

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule – except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19- operates as an adjudication on the merits.

“Further, the United States Supreme Court has recognized that courts have an inherent power to manage their own affairs and may dismiss a case sua sponte for lack of prosecution.” *Lyons-Bey v. Pennell*, 93 F. App'x 732, 733 (6th Cir. 2004) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962)).

Here, the Magistrate Judge’s R & R clearly outlines Pettway’s failures to prosecute his claims despite being given a second opportunity to do so. In light of these failures and in light of Pettway’s failure to object to the R & R, the Court adopts the Magistrate Judge’s recommendation, grants the motions to dismiss at ECF # 28 and #29 and dismisses Pettway’s claims with prejudice.

IT IS SO ORDERED.

/s/Christopher A. Boyko
CHRISTOPHER A. BOYKO
Senior United States District Judge