

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES R. SMITH,	)	
	)	
Plaintiff,	)	Civil Action No. 17-1606
	)	Judge Kim R. Gibson/
v.	)	Chief Magistrate Judge Maureen P. Kelly
	)	
S.C.I. BENNER TOWNSHIP and RICKEY L.	)	
SHERMAN,	)	
	)	
Defendants.	)	

**ORDER**

James R. Smith (“Plaintiff”), is a prisoner currently incarcerated at SCI-Benner, which is located in Centre County, which is contained within the territorial limits of the United States District Court for the Middle District of Pennsylvania. The gravamen of Plaintiff’s Complaint is that, while he was housed at SCI-Benner, Defendant Rickey L. Sherman (“Sherman”) has been engaged in verbal sexual harassment of Plaintiff, including Sherman allegedly asking Plaintiff if Sherman can perform sexual acts on Plaintiff. ECF No. 1 at 2. These events allegedly occurred from October through November, 2017. *Id.* ¶ IV.A. Plaintiff named two defendants in the Complaint: 1) SCI-Benner Township and 2) Sherman.

The Chief Magistrate Judge to whom this case was referred issued a Report and Recommendation on January 11, 2018, ECF No. 7, recommending that the case be transferred to the United States District Court for the Middle District of Pennsylvania. Objections were due by January 29, 2018. No objections were filed by that date.

However, on February 5, 2018, Plaintiff filed what the Clerk’s Office docketed as a “Motion to Dismiss.” ECF No. 8. We treat the Motion to Dismiss as Plaintiff’s Request for Voluntary Dismissal of the lawsuit pursuant to Fed. R. Civ. P. 41(a)(2) (b) (the “Request for

Voluntary Dismissal”). In the Request for Voluntary Dismissal, Plaintiff requests that the suit be dismissed against Sherman, one of the two Defendants named in the Complaint. However, Plaintiff also requests that the suit be dismissed against a Stephen Bunk, who was not mentioned in the Complaint. Plaintiff does not specifically request that the suit be dismissed against the other named defendant, i.e., SCI-Benner Township.

In light of the foregoing, the Court ordered Plaintiff to fill out a form to clearly indicate whether he wants the entire case dismissed against all defendants. ECF No. 9. Plaintiff filled out the form and indicated that he wanted to continue the case against SCI-Benner Township. ECF No. 11.

Given that Plaintiff wants to continue this lawsuit and given that SCI-Benner Township is located within the Middle District of Pennsylvania, it is hereby ORDERED that this case be transferred forthwith to the United States District Court for the Middle District of Pennsylvania. Plaintiff’s Motion for Copies of filings, ECF No. 10, is DENIED without prejudice to Plaintiff contacting the Clerk’s Office and arranging payments for copies of that which he desires. The Report and Recommendation of Chief United States Magistrate Judge Kelly is ADOPTED as the opinion of the Court.

BY THE COURT:

/s/ 

KIM R. GIBSON

UNITED STATES DISTRICT JUDGE

Dated: ~~February~~ <sup>March</sup> 1, 2018

cc: The Honorable Maureen P. Kelly  
Chief United States Magistrate Judge

JAMES R. SMITH  
ML 5260  
S.C.I. Benner Township  
301 Institution Drive  
Bellefonte, PA 16823