

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

David James, # 181333,	)	C.A. No. 2:10-cv-01213-JMC
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
South Carolina Department of Corrections; Attorney General )	)	
Henry Dargan McMaster; South Carolina Department of )	)	
Corrections Headquarters,	)	
	)	
Defendants.	)	
_____	)	

This case is before the court on Plaintiff’s failure to fully comply with the Magistrate Judge’s Orders previously entered on May 14, 2010 [Entry # 5] and August 31, 2010. [Entry # 17].

A review of the record indicates that the Magistrate Judge initially ordered Plaintiff to submit items needed to bring this case into proper form within twenty-one (21) days, and specifically informed Plaintiff that if he failed to do so, this case would be dismissed *without prejudice*. The Order was forwarded to Plaintiff at the address provided, and it was not returned to the court. Plaintiff partially complied with the Order by submitting a Motion for Leave to Proceed *in forma pauperis* [Entry # 8] and a letter [Entry # 9]. Accordingly, the court presumes that Plaintiff received the Order, but neglected to fully comply with it within the time permitted under the Order. Out of an abundance of caution and because of his partial compliance, the Magistrate Judge issued a second, “FINAL” Order directing Plaintiff to fully comply with the directions he was given in the first Order. [Entry #17]. The second Order was not returned to the court as undeliverable; therefore, it is presumed that Plaintiff received it. The time for compliance with the second Order has now expired with no further communication or attempt to comply from Plaintiff.

Plaintiff's lack of response to the second, "FINAL," Order indicates an intent to abandon prosecution of this case and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a plaintiff fails to comply with "any order of the court."; *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Accordingly, this case is dismissed without prejudice. The Clerk of Court shall close the file.<sup>1</sup>

**IT IS SO ORDERED.**

s/ J. Michelle Childs  
United States District Judge

November 4, 2010  
Greenville, South Carolina

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<sup>1</sup> Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does not count as a "strike" for purposes of the "three strikes" provision of 28 U.S.C. § 1915(g). If Plaintiff wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk's Office in Columbia (901 Richland Street, Columbia, South Carolina 29201).