

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Levi Pruitt,)	Civil Action No. 9:08-3048-GRA-BM
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Officer Troutman, Badge 602,)	
)	
Defendant.)	

The pro se Plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On February 17, 2009, the Defendant filed a motion for summary judgment. By order of this Court filed February 19, 2009, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Plaintiff was advised of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. Plaintiff was specifically warned that if he failed to respond, the Defendant's motion may be granted, thereby ending his case.

However, notwithstanding the specific warning and instructions as set forth in the Court's Roseboro order, the Plaintiff failed to respond to the motion, or to contact the Court in any way. Indeed, a review of the file in this matter reveals that the Court has had no contact from the Plaintiff since this action was filed over six (6) months ago. Further, Plaintiff has recently had another case he filed pro se dismissed for failure to prosecute, based on his failure to respond to a summary judgment motion or to contact the Court in that case. See Pruitt v. Brewton, C.A. No. 3:08-0879.

Therefore, Plaintiff meets all of the criteria for dismissal of his case under Chandler

Handwritten initials: RP, CZ

Leasing Corp. v. Lopez, 669 F.2d 929 (4th Cir. 1982).¹ Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution. See Davis v. Williams, 558 F.2d 69, 70 (4th Cir. 1978); Rule 41(b), Fed. R. Civ. P. **If, within the time for filing objections to this Report and Recommendation, Plaintiff advises the Court that he wants to proceed with this matter and files a response to the motion for summary judgment, then in that event the Clerk is instructed to vacate this Report and Recommendation and return the file to the undersigned for further review.** If, however, Plaintiff fails to respond, the file should be forwarded to the District Judge for disposition. Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989), cert. denied sub nom, Ballard v. Volunteers of America, 493 U.S. 1084 (1990) [Magistrate Judge's prior explicit warning that a recommendation of dismissal would result from plaintiff failing to obey his order was proper grounds for the district court to dismiss suit when plaintiff did not comply despite warning].

The parties are referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

March 24, 2009
Charleston, South Carolina

¹He is personally responsible for proceeding in a dilatory fashion, the Defendant is suffering prejudice due to having to expend time and resources on a case in which the Plaintiff is unresponsive, and no sanctions other than dismissal appear to exist as the Plaintiff is indigent (and therefore not subject to monetary sanctions) and he has otherwise failed to respond to Court filings despite Court orders requiring him to do so. Lopez, 669 F.2d at 920.

P2

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

18
P3