

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

|                              |   |                          |
|------------------------------|---|--------------------------|
| JOHNNY L. McGOWAN, JR.,      | ) |                          |
|                              | ) |                          |
| <i>Plaintiff,</i>            | ) |                          |
|                              | ) |                          |
| v.                           | ) | No.: 3:12-cv-263-TAV-CCS |
|                              | ) |                          |
| SHEILA RUIZ, <i>et al.</i> , | ) |                          |
|                              | ) |                          |
| <i>Defendants.</i>           | ) |                          |

**MEMORANDUM AND ORDER**

This is a *pro se* prisoner's civil rights action under 42 U.S.C. § 1983; plaintiff has paid the filing fee. The defendants are employees at the Morgan County Correctional Facility. Process was returned executed as to seven defendants and unexecuted as to the remaining five defendants, with several of the envelopes simply marked "refused." The U.S. Marshals Service served the summons and complaint upon all the defendants by certified mail.

Counsel for the defendants who were served with process was ordered to inform the Court as to the best way to serve process upon the remaining five defendants. In response, counsel stated that the service packets were apparently returned because they did not contain full names and instead were addressed to individuals who shared the same or similar name with another person at the prison. Counsel further stated that the prison administration had been instructed to accept service and to attempt to direct the service

packets to the appropriate person, but that it would be helpful if plaintiff could be more specific as to the defendant's position or rank.

Plaintiff then filed a notice that the following defendants had not been served with process: Unit Manager Fred James, Correctional Officer George King, Corporal B. Foster, Correctional Officer L. Auger, and Correctional Officer W. Potter. Plaintiff also moved the Court for assistance in serving these individuals. Plaintiff's motion for assistance was granted to the extent the Clerk was directed to issue alias summons for the aforementioned five defendants with their titles, which the U.S. Marshal was ordered to serve, either by certified mail with the defendant's title or personal service, as was appropriate and necessary.

The U.S. Marshals Service then attempted to serve the five defendants by certified mail. The service was successful as to defendants Corporal B. Foster and Correctional Officer L. Auger, and process was returned executed as to those defendants. Process was returned unexecuted as to defendants Unit Manager Fred James, Correctional Officer George King, and Correctional Officer W. Potter, with the envelopes marked "refused." Plaintiff moves the Court to order service of process upon these defendants. The motion [Doc. 50] is **GRANTED** to the extent the Clerk is **DIRECTED** to issue alias summons for the three unserved defendants with their titles and the U.S. Marshal is **ORDERED** to personally serve copies of the summons and complaint upon defendants Unit Manager Fred James, Correctional Officer George King, and Correctional Officer W. Potter at the Morgan County Correctional Complex or wherever the defendants may be found.

Plaintiff's motion for sanctions against defense counsel based upon the lack of service [Doc. 48] is **DENIED**.

Plaintiff has also filed a motion to compel discovery, in which he states that the defendants refuse to comply with his discovery requests which have been outstanding for more than six months. The defendants have not filed a response to the motion to compel. The motion [Doc. 49] is **GRANTED** to the extent the defendants are **ORDERED** to respond to plaintiff's discovery requests.

Plaintiff has also filed a motion for an emergency restraining order, asking that he not be returned to the Morgan County Correctional Complex. At the time he filed the motion, plaintiff was confined in the West Tennessee State Penitentiary. Shortly after filing that motion, plaintiff informed the Court of his transfer to the Charles Bass Correctional Complex. He has since been transferred to the Northwest Correctional Complex, where he remains. The housing of state prisoners is a matter within the discretion of the officials of the Tennessee Department of Correction. The motion for an emergency restraining order [Doc. 46] is **DENIED**.

**ENTER :**

s/ Thomas A. Varlan  
CHIEF UNITED STATES DISTRICT JUDGE