

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

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|--------------------------------|---|----------------------------------|
| JUSTIN GUESS, |) | |
| |) | Case No. 3:23-cv-84 |
| <i>Plaintiff,</i> |) | |
| |) | Judge Travis R. McDonough |
| v. |) | |
| |) | Magistrate Judge Debra C. Poplin |
| TIM L. PIERCE, <i>et al.</i> , |) | |
| |) | |
| <i>Defendants.</i> |) | |
| |) | |

MEMORANDUM OPINION

Plaintiff, a Tennessee Department of Correction prisoner housed in the South Central Correctional Facility, initiated this action by filing an incomplete application for leave to proceed *in forma pauperis* (Doc. 1). In this filing, Plaintiff included allegations regarding Defendants and abuse during his life and requests for a private investigator, an investigation, and a complaint packet, among other things. (*Id.* at 2, 4, 5.) After receiving this application, the Clerk mailed Plaintiff a § 1983 complaint form. Plaintiff then returned a filing that consists of a completed first page of the complaint form listing himself as Plaintiff and various individuals as Defendants, several pages of written allegations against Defendants, the address change notice the Clerk previously sent to Plaintiff, and a completed last page of the complaint form that contains requests for relief and his signature under penalty of perjury. (Doc. 3, at 1–5.)

After receiving Plaintiff’s complaint documents, the Court entered an order notifying Plaintiff that he had not filed the required documents to proceed *in forma pauperis* and providing him thirty days to do so. (Doc. 4.) Instead of complying with this order, Plaintiff has filed a motion to withdraw his complaint (Doc. 5). In this motion, Plaintiff states that (1) his letter to

the Court “did not, in any way, resemble a pleading or complaint;” (2) he was asking the Court for information regarding “potential grounds he might have for civil suit, while currently acknowledging that he erred in asking the Court for legal advice;” (3) his intent was to seek information, rather than file a complaint; and (4) he is not interested in filing a complaint at this time. (*Id.* at 1.) Plaintiff therefore requests that the Court allow him to “withdraw the current case without prejudice” and “further and general relief as the nature of this cause may require.” (*Id.* at 1–2.) Also, in a handwritten note on the first page of this motion, Plaintiff states that he “was just asking the Court what grounds [and] also the diff[erent] ways to proceed[;] I never wanted to file it yet but pl[ease] response asap[;] [I’]m looking at grounds for this.” (*Id.* at 1.)

The Court disagrees with Plaintiff’s assertion that he did not file a complaint in this action. To the contrary, the record demonstrates that, after Plaintiff requested and the Clerk sent him a complaint form, Plaintiff filed a document that is unmistakably a complaint. (Doc. 3.) Regardless, given the early nature of this litigation, as well as the fact that Plaintiff has not yet returned the required documents to proceed *in forma pauperis*, the Court is inclined to allow Plaintiff to dismiss this action without prejudice. Additionally, Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure allows a plaintiff to dismiss an action even without a court order by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment[,]” as is the case here.

Accordingly, Plaintiff’s motion to withdraw this action (Doc. 5) will be **GRANTED**, and this action will be **DISMISSED without prejudice**. Also, the Court **CERTIFIES** that any appeal from this dismissal would not be taken in good faith.

AN APPROPRIATE JUDGMENT WILL ENTER.

/s/ Travis R. McDonough

**TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE**