

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JESSE LYN MILLIRON §
VS. § CIVIL ACTION NO. 2:08cv447
RANDALL LAIN, ET AL. §

MEMORANDUM OPINION AND
ORDER OF DISMISSAL

Plaintiff Jesse Lyn Milliron, previously a prisoner confined in the Camp County Jail, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was transferred to the undersigned with the consent of the parties pursuant to 28 U.S.C. § 636(c).

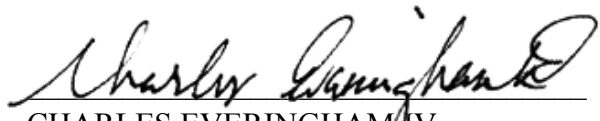
On June 30, 2009, the Court issued an order to the Plaintiff giving him a deadline to explain why the case should not be dismissed for failure to comply with the Scheduling Order. More specifically, he failed to submit the requisite witness and exhibit lists. The letter containing the order was mailed to the Plaintiff at his last known address, which was the Henderson County Jail. On July 7, 2009, the letter was returned with the notation that the Plaintiff had not been confined in the Henderson County Jail since April 14, 2009. The Plaintiff's whereabouts are unknown. As of today, the Plaintiff has not provided the Court with a new address. He has failed to prosecute this case.

The exercise of the power to dismiss for failure to prosecute is committed to the sound discretion of the Court and appellate review is confined solely in whether the Court's discretion was abused. *Green v. Forney Engineering Co.*, 589 F.2d 243 (5th Cir. 1979); *Lopez v. Aransas County*

Independent School District, 570 F.2d 541 (5th Cir. 1978). Not only may a district court dismiss for want of prosecution upon motion of a defendant, but it may also, *sua sponte*, dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion County General Hospital*, 617 F.2d 1164 (5th Cir. 1980). The present case should be dismissed. It is accordingly

ORDERED that the complaint is **DISMISSED** without prejudice for want of prosecution. Fed. R. Civ. P. 41; Rule 41, Local Rules for the Eastern District of Texas. All motions not previously ruled on are **DENIED**.

SIGNED this 5th day of August, 2009.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE