

United States District Court  
Southern District of Texas

**ENTERED**

April 04, 2018

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

JIMMY D. SAVILLE (TDCJ #1366096),	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 3:17-CV-80
	§	
SERGEANT WINSTON, et al.,	§	
	§	
Defendants.	§	
	§	

**ORDER**


Plaintiff Jimmy D. Saville (TDCJ #1366096) has filed a civil rights complaint under 42 U.S.C. § 1983, concerning an incident that occurred while he was incarcerated by the Texas Department of Criminal Justice (“TDCJ”) at the Darrington Unit. Saville, who is proceeding *pro se* and *in forma pauperis* (Dkt. 11), claims primarily that he was denied access to medical care, or that care was delayed, when Sergeant Larry Winston ignored his symptoms of a heart attack. Pending before the Court is Assistant Warden James Danheim’s motion to dismiss Saville’s claims against him under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (Dkt. 18). Saville has responded with a motion for leave to file a supplemental complaint (Dkt. 29). The proposed supplemental complaint drops Assistant Warden Danheim as a defendant and adds Warden Eddie Baker in his place (Dkt. 30). Also pending is a motion filed by Defendant Larry Winston for leave to file an answer out of time (Dkt. 35).

After considering all of the pleadings and pending motions, the Court **ORDERS** as follows:

1. Plaintiff Jimmy D. Saville's motion for leave to file a supplemental complaint (Dkt 29) is **GRANTED**.<sup>1</sup>
2. Because he is no longer a defendant, the motion to dismiss filed by Assistant Warden Danheim (Dkt. 18) is **DENIED** as **MOOT**.
3. Defendant Larry Winston's motion for leave to file an answer out of time (Dkt. 35) is **GRANTED** and his answer (Dkt. 36) will be considered timely.
4. The Court does not request an answer from Warden Eddie Baker at this time. Defendant Winston shall file any dispositive motion within 90 days of the date of this Order. The plaintiff shall file any response to a dispositive motion filed by the defendant within 30 days of the date shown on the defendant's certificate of service.

The Clerk is directed to provide a copy of this order to the parties.

SIGNED at Galveston, Texas, on April 2, 2018.

  
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GEORGE C. HANKS, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The record reflects that Saville filed a second copy of his motion for leave to file a supplemental complaint (Dkt. 31), which includes a copy of the same proposed supplemental complaint (Dkt. 32). The Clerk's Office is directed to terminate this motion (Dkt. 31) as a duplicate.