

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DERRICK C. RHODES,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:19-CV-336-WHA
)	[WO]
SHERIFF VALENZA,)	
)	
Defendant.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff filed this 42 U.S.C. § 1983 action on May 9, 2019. When he filed suit, Plaintiff was incarcerated at the Houston County Jail in Dothan, Alabama. On June 11, 2019, the court entered an order of procedure directing Defendant Valenza to file an answer and special report. Doc. 9. The order also directed Plaintiff to “immediately inform the court and Defendant or Defendant’s counsel of record of any change in his address,” and cautioned him that “[f]ailure to provide a correct address to this court within ten (10) days following any change of address will result in the dismissal of this action.” *Id.* at 3, ¶8.

On November 22, 2019, Plaintiff’s copy of an order entered November 12, 2019, was returned to the court marked as undeliverable because Plaintiff is no longer housed at the last service address he provided. Accordingly, the court entered an order on November 25, 2019, requiring that by December 5, 2019, Plaintiff file with the court a current address or show cause why this case should not be dismissed for his failure to adequately prosecute this action. Doc. 27. This order specifically advised Plaintiff this case could not proceed if his whereabouts remained unknown and informed him that his failure to comply with its directives would result in the

dismissal of this case. *Id.* Plaintiff's copy of this order was returned to the court on December 5, 2019, marked as undeliverable.

The foregoing makes clear Plaintiff has failed to comply with the directives of the orders entered by this court and reflects a lack of interest in the continued prosecution of this case. This action cannot proceed properly in Plaintiff's absence. The court, therefore, concludes this case is due to be dismissed. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (As a general rule, where a litigant has been forewarned, dismissal for failure to obey a court order is not an abuse of discretion.).

Accordingly, it is the RECOMMENDATION of the Magistrate Judge this case be DISMISSED without prejudice for Plaintiff's failures to comply with the orders of this court and to prosecute this action.

It is

ORDERED that **on or before December 26, 2019**, the parties may file an objection to the Recommendation. Any objection filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. This Recommendation is not a final order and, therefore, it is not appealable.

Failure to file a written objection to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of issues covered in the report and shall bar a party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir.

1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 11th day of December 2019.

/s/ Charles S. Coody
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE