FILED
JUNE 2, 2009
KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

AMARILLO DIVISION

RICHARD JAMES JOHNSON, PRO SE,	§	
TDCJ-CID #1005689,	§	
Previous TDCJ-CID #616683,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:07-CV-0191
	§	
JOE GRIMES ET AL.,	§	
	§	
Defendants.	§	

REPORT AND RECOMMENDATION

Plaintiff RICHARD JAMES JOHNSON, acting pro se and while a prisoner incarcerated in the Texas Department of Criminal Justice, Institutional Division, has filed suit pursuant to Title 42, United States Code, Section 1983 complaining against the above-referenced defendants and has been granted permission to proceed in forma pauperis. On March 9, 2009, defendants GRIMES, ROWLANDS, SLOAN, SHIPP, NOVAK, HASKINS, and KIZER filed an Answer.

On March 11, 2009, the Office of the Attorney General, acting as Amicus Curiae, filed an Advisory to the Court stating attempts to identify defendants KELLY and GERRALDO had been unsuccessful but that, if plaintiff provided additional information to assist in identifying these persons, further attempts would be made.

In the two and a half months that have followed, plaintiff has made no response and has offered no further information concerning defendant KELLY and GERRALDO. It appears he

has abandoned his claims against these defendants and such defendants should be dismissed for failure to prosecute. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962) (court possesses inherent power to dismiss *sua sponte* for lack of prosecution).

CONCLUSION

For the reasons set forth above, it is the RECOMMENDATION of the Magistrate Judge to the United States District Judge that the Civil Rights Claims against defendants KELLY and GERRALDO filed pursuant to Title 42, United States Code, Section 1983, by plaintiff RICHARD JAMES JOHNSON be DISMISSED WITHOUT PREJUDICE for failure to prosecute.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 2nd day of June, 2009.

CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

* NOTICE OF RIGHT TO OBJECT *

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be filed **on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the "entered" date. *See* 28 U.S.C. § 636(b); Fed. R.

Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).