

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**JOHNNY ASBERRY,**

**Plaintiff,**

**V.**

**COMMISSIONER OF  
GEORGIA DEPARTMENT  
OF CORRECTIONS, *et al.*,**

**Defendant.**

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**NO. 5:23-cv-00092-MTT-MSH**

**ORDER OF DISMISSAL**

Plaintiff Johnny Asberry, a prisoner in Coastal State Prison in Garden City, Georgia, filed a handwritten document, which was docketed in this Court as a complaint under 42 U.S.C. § 1983. Compl., ECF No. 1. This document and two others Plaintiff filed purported to be notices regarding potential claims that Plaintiff apparently believes he has. *Id.*; Notice of Fair Warning, ECF Nos. 2 & 3. Because Plaintiff had not filed a complaint on the required § 1983 form, he was ordered to do so. Order, ECF No. 5. Plaintiff was also ordered to either pay the \$402.00 filing fee for a civil rights complaint or file a proper and complete motion to proceed *in forma pauperis*. *Id.*

Plaintiff was given fourteen days to file his recast complaint and either pay the filing fee or seek leave to proceed *in forma pauperis*. *Id.* He was also cautioned that his failure to comply could result in the dismissal of this action. *Id.* More than fourteen days passed following entry of that order, and Plaintiff did not file a recast complaint, pay the filing fee, move for leave to proceed *in forma pauperis*, or otherwise respond to the order.

Therefore, Plaintiff was ordered to show cause to the Court why this case should not be dismissed for failure to comply with the previous order. Order to Show Cause, ECF No. 6. Plaintiff was given fourteen days to respond and was cautioned that his failure to do so would likely result in the dismissal of this case. *Id.*

More than fourteen days have now passed since the show cause order was entered, and Plaintiff has not responded to that order. Therefore, because Plaintiff has failed to respond to the Court's orders and has otherwise failed to prosecute this case, it is hereby **ORDERED** that this action be **DISMISSED WITHOUT PREJUDICE**. *See* Fed. R. Civ. P. 41(b); *Brown v. Tallahassee Police Dep't*, 205 F. App'x 802, 802 (11th Cir. 2006) (per curiam) ("The court may dismiss an action *sua sponte* under Rule 41(b) for failure to prosecute or failure to obey a court order.") (citing Fed. R. Civ. P. 41(b) and *Lopez v. Aransas Cty. Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978)).

**SO ORDERED**, this 12th day of June, 2023.

S/ Marc T. Treadwell  
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MARC T. TREADWELL, CHIEF JUDGE  
UNITED STATES DISTRICT COURT