

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SHAWN T. JONES,	:	CIVIL NO. 1:CV-13-0311
Plaintiff,	:	
	:	(Judge Kane)
v.	:	
	:	
JOHN E. WETZEL, et al.,	:	
Defendants	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On February 7, 2013, Shawn T. Jones (“Jones”), at the time an inmate confined at the State Correctional Institution at Frackville, Pennsylvania, filed this civil rights complaint pursuant to 42 U.S.C. § 1983. Named as Defendants are Pennsylvania Department of Corrections officials, SCI-Frackville employees and Pennsylvania Board of Probation and Parole (“PBPP”) employees. Jones raises challenges with respect to treatment programs he is required to complete prior to pre-release and, in particular, a “Therapeutic Community” program that is religiously/spiritually based and which is in conflict with Jones’ sincerely held beliefs. (Doc. No. 1, Compl., ¶ 1.) He further raises claims of retaliation following his challenges to the program, including the denial of a recommendation on parole due to his “unacceptable compliance with institutional program.” (Doc. No. 1, ¶ 14.) On March 6, 2013, Jones provided a notice of address change advising the Court that he was being transferred to a treatment facility at the direction of the PBPP, and that all mail should be forwarded to his following new address at “Kintock Erie (136), 301 East Erie Avenue, Philadelphia, PA 19124.” (Doc. No. 9.) On May 20, 2013, service of the complaint was directed on the Defendants. (Doc. No. 11.)

On June 11, 2013, a copy of the service order mailed to Jones at his new address was

returned to the Court marked as undeliverable, and the envelope was marked “Return to Sender-Unable to Forward.” (Doc. No. 14.) The Court has independently checked the Pennsylvania Department of Corrections computerized Inmate Locator, see <http://www.cor.state.pa.us/inmatelocatorweb/>, as well as telephoned the Kintock Erie facility, in an effort to locate Jones, but to no avail. It was learned that Jones was released from Kintock Erie on May 21, 2013.

Defendants have filed motions to dismiss the complaint and briefs in support thereof, and served them on Jones at his last known address at Kintock Erie. (Doc. Nos. 21, 22, 24 and 25.) Jones has failed to file any opposition to the motions. On September 9, 2013, the Court issued an order directing Jones to file his response to Defendants’ motions within fourteen (14) days, and advising him that the failure to do so may result in the granting of the motions or dismissal of his case for failure to prosecute. This order was also sent to Jones at his last known address at Kintock Erie. No opposition briefs have been filed by Jones, and he has not notified the Court of his current whereabouts. In fact, the last contact received from Jones was the change of address to Kintock Erie on March 6, 2013.

Fed. R. Civ. P. 41(b) authorizes the Court to dismiss an action “[i]f the plaintiff fails to prosecute.” The United States Supreme Court has held that “[t]he authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” Link v. Wabash R.R. Co., 370 U.S. 626, 631, 82 S.Ct. 1386, 1389, 8 L.Ed.2d 734 (1962). “Such a dismissal is deemed to be an adjudication on the merits, barring any further action between the parties.” Iseley v. Bitner, 216 F. App’x 252, 255 (3d Cir. 2007). Ordinarily when deciding, sua sponte, to dismiss an action as

a sanction, a District Court is required to consider and balance six factors enumerated in Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 868 (3d Cir. 1984). However, when a litigant's conduct makes adjudicating the case impossible, an analysis of the Poulis factors is unnecessary. See Iseley, 216 F. App'x at 255 (citing Guyer v. Beard, 907 F.2d 1424, 1429-30 (3d Cir. 1990) and Spain v. Gallegos, 26 F.3d 439, 454-55 (3d Cir. 1994)); see also Williams v. Kort, 223 F. App'x 95, 103 (3d Cir. 2007).

On February 7, 2013, the Court sent Jones a copy of our Standing Practice Order which advises pro se litigants of their obligation to notify the Court of any change of address. (Doc. No. 3 at 4.) Jones was warned that if he failed to notify the Court of his change of address, he will be deemed to have abandoned his action. As a result of Jones' failure to notify the Court of his present location, neither the Defendants nor the Court are able to communicate with him. As such, it would be a waste of judicial resources to allow this action to continue.

ACCORDINGLY, THIS 3rd DAY OF DECEMBER, 2013, IT IS HEREBY

ORDERED THAT:

1. Pursuant to Fed. R. Civ. P. 41(b), this case is **dismissed with prejudice** for failure to prosecute and to comply with a court order.
2. Defendants' pending motions to dismiss the complaint (Doc. Nos. 21, 24) are **denied as moot**.
3. The Clerk of Court is directed to **close this case**.
4. Any appeal from this order is frivolous, lacking in probable cause and not taken in good faith.

S/ Yvette Kane
YVETTE KANE, Judge
Middle District of Pennsylvania