

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROJELIO BARRON,

Plaintiff,

v.

KEN McGOVERN, KENNETH MASSEY,
JUDY DOE, AND PAM DOE,
in their individual capacities,

Defendants.

Case No. 07-3179-JWL

ORDER

Plaintiff Rojelio Barron, a prisoner acting pro se, brought a claim under 42 U.S.C. § 1983, based on his allegation that defendants violated the Eighth Amendment to the United States Constitution by acting with deliberate indifference to his medical needs while he was incarcerated at the Douglas County Jail in Douglas County, Kansas. On December 21, 2007, the Court issued a Memorandum and Order granting defendants' motion to dismiss the amended complaint on the basis that plaintiff failed to allege sufficient facts concerning defendants' state of mind (Doc. # 30). See Barron v. McGovern, 2007 WL 4561524 (D. Kan. Dec. 21, 2007). The Court granted plaintiff until January 22, 2008, however, in which to file a second amended complaint properly

stating a claim under the Eighth Amendment. Id.¹ On January 25, 2008, because no new complaint had been filed, judgment was entered in favor of defendants.

This matter now comes before the Court on plaintiff's Motion for Reconsideration and for an Opportunity to Respond (Doc. # 33), filed February 11, 2008. Plaintiff states that he received a copy of the judgment, but that he never received a copy of the Court's Memorandum and Order of December 21, 2007. Plaintiff also claims that he never received a copy of defendants' motion to dismiss. Plaintiff therefore asks the Court to reconsider the dismissal of the case and allow him an opportunity to respond to the motion to dismiss.²

Plaintiff's motion is **granted in part and denied in part**. First, it is clear that plaintiff did receive a copy of defendants' motion to dismiss, as plaintiff filed both a written response to the motion (Doc. # 20) and a motion to supplement that response (Doc. # 28). Accordingly, plaintiff's request for further opportunity to respond to the motion to dismiss is denied. Plaintiff also claims, however, that he failed to receive a copy of the Court's Memorandum and Order, which granted plaintiff time in which to file another complaint. Accordingly, based on plaintiff's representation, the Court grants plaintiff's motion to the extent that the judgment against him is vacated. Plaintiff is

¹The Memorandum and Order mistakenly stated the deadline for plaintiff's second amended complaint as January 22, 2007.

²After filing the present motion, plaintiff filed a notice of appeal (Doc. # 35). The Tenth Circuit has ordered the appeal abated, however, pending this Court's disposition of plaintiff's motion for reconsideration (Doc. # 39).

hereby granted until April 28, 2008, in which to file a second amended complaint, in accordance with the Court's prior opinion. If no such complaint is filed, judgment will again be entered against plaintiff. The Clerk of the Court is hereby ordered to send to plaintiff, by certified mail, another copy of the Court's Memorandum and Order of December 21, 2007, along with a copy of this Order.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's motion for reconsideration (Doc. # 33) is **granted in part and denied in part**. Plaintiff's request for an additional opportunity to respond to defendants' motion to dismiss is denied. Plaintiff's request relating to the judgment is granted. The judgment against plaintiff is hereby vacated. Plaintiff is granted leave to file, by April 28, 2007, a second amended complaint. If no such complaint is filed by that date, judgment will be entered against plaintiff.

IT IS FURTHER ORDERED THAT the Clerk of the Court shall send to plaintiff, by certified mail, a copy of this Order and an additional copy of the Court's Memorandum and Order of December 21, 2007.

IT IS SO ORDERED.

Dated this 21st day of March, 2008, in Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge