

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MARCUS B. WASHINGTON,

Plaintiff,

vs.

CIVIL ACTION  
No. 09-3148-SAC

RAYMOND ROBERTS,

Defendant.

MEMORANDUM AND ORDER

This matter comes before the court on a civil action filed pro se by a prisoner in state custody. By an earlier order, the court denied plaintiff's motion to alter or amend judgment and directed him to show cause why this matter should not be dismissed. Plaintiff was advised the failure to file a timely response might result in the dismissal of this matter with prejudice and without additional prior notice to him. There has been no response.

A federal court has the inherent power to act sua sponte to dismiss an action for failure to prosecute. *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962). Federal Rule of Civil Procedure 41(b) authorizes the involuntary dismissal of an action for failure to prosecute or to comply with procedural

rules or orders of the court. While the text of Rule 41(b) contemplates such dismissal upon the motion of a defendant, the rule has been interpreted to allow the sua sponte dismissal of an action. *Link, id.*; *Rogers v. Andrus Transp. Services*, 502 F.3d 1147, 1151 (10<sup>th</sup> Cir. 2007).

The court finds plaintiff has failed to prosecute this action and has been given adequate notice of the court's intention to dismiss this matter for lack of prosecution.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed for lack of prosecution.

A copy of this Memorandum and Order shall be transmitted to the plaintiff.

**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 23<sup>rd</sup> day of February, 2011.

S/ Sam A. Crow  
SAM A. CROW  
United States Senior District Judge