

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SIDNEY P. KILMARTIN,)
)
 Plaintiff,)
)
 v.) 1:15-cv-00277-JAW
)
MCKEE, BILLINGS & MORGAN,)
P.A., et al.,)
)
 Defendants.)

ORDER DISMISSING COMPLAINT

On July 16, 2015, Sidney P. Kilmartin filed a lawsuit against Attorney James F. Billings and his law firm, McKee, Billings & Morgan, P.A., on a number of theories relating to Attorney Billings and his law firm’s representation of Mr. Kilmartin in a still pending criminal action. *Compl.* (ECF No. 1). On August 5, 2015, the Clerk’s Office forwarded Mr. Kilmartin a letter in which it enclosed some waiver of service of process forms. *Letter from Jennifer L. Gray, Case Manager, to Sidney Kilmartin* (Aug. 5, 2015) (ECF No. 4). On November 18, 2015, the Court issued an Order to Show Cause, noting that service had not yet been completed and ordering Mr. Kilmartin to show good cause by December 2, 2015 as to why such service had not been accomplished and warning Mr. Kilmartin that the failure to show good cause would result in the dismissal of the case. *Order to Show Cause* (ECF No. 8).

In response, on December 2, 2015, Mr. Kilmartin filed a letter with the Court. *Letter from Sidney Kilmartin to Clerk of Courts* (Nov. 25, 2015) (ECF No. 9). In the

letter, Mr. Kilmartin explained that “it wasn’t my fault” because he had been “transferred between 3 institutions” and his “legal mail didn’t catch up to me until just recently.” *Id.* at 1. He asked the Court to “take into consideration the fact that I made service as soon as it was possible.” *Id.*

On December 15, 2015, the Court issued an order, explaining to Mr. Kilmartin that he had not yet made service on the Defendants and giving Mr. Kilmartin until January 15, 2016 to make service. *Order on Resp. to Order to Show Cause* (ECF No. 10). The Court warned Mr. Kilmartin that if he failed to effect service by January 15, 2016, the Court would conclude that he had decided not to proceed with the civil lawsuit and would dismiss the pending civil action. *Id.* at 2.

The January 15, 2016 deadline passed without word from Mr. Kilmartin and the Court tugged on the deadline a bit to make sure that he had not put something in the mail from prison that would comply with the deadline. *See Houston v. Lack*, 487 U.S. 266 (1988). However, nearly two weeks after the deadline, the Court is satisfied that it is unlikely that Mr. Kilmartin is going to comply with the order and effect service of process on the Defendants.

Accordingly, the Court DISMISSES the Complaint (ECF No. 1) without prejudice.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 28th day of January, 2016