

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AARON E. BRUTON,)
)
Plaintiff,)
)
v.) Civ. No. 03-224-KAJ
)
RAPHAEL WILLIAMS, QR2 TEAM)
(MPCJF), NEW CASTLE COUNTY)
POLICE, LARRY MCGUIGAN, SGT.)
WASHINGTON, MAJOR)
CUNNINGHAM, JOSEPH BELANGER,)
and QR2 TEAM ("DCC"),)
)
Defendants.)

MEMORANDUM ORDER

Currently pending before the Court is Plaintiff Aaron E. Bouton's ("Bouton"), SBI # 198256, "Motion to Reinstate Enrolled Judgment" (D.I. 13), which the Court construes as a motion for reconsideration pursuant to Fed. R. Civ. P. 60 (b)(6).

Bruton asserts that he is relying on Fed. R. Civ. P. 60 (b)(6).¹ "A motion filed pursuant to Rule 60(b) is 'addressed to the sound discretion of the trial court guided by accepted legal principles applied in light of all relevant circumstances.'" Dietsch v. United States, 2 F.Supp.2d 627, 630 (E.D. Pa. 1998) (quoting Ross v. Meagan, 638 F.2d 646, 648 (3d Cir. 1981) overruled on other grounds, Roman v. Jeffes, 904 F.2d 192, 195 n.4 (3d Cir. 1990)).

¹ The Local Rules of Civil Procedure require that "[a] motion for re-argument shall be served and filed within 10 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor." Local Rule Civ. P. 7.1.5. Similarly, Fed. R. Civ. P. 59(e) requires a party to file a Motion to Alter or Amend Judgment "no later than 10 days after entry of the Judgment."

Fed. R. Civ. P. 60(b) provides that a party may file a motion for relief from a final judgment for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence by which due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b). "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." *Id.* The Order dismissing Bruton's complaint was entered on July 2, 2003. Bruton filed his Motion for Reconsideration on September 9, 2004.

Bruton correctly notes that Fed. R. Civ. P. 60(b)(6) permits him to file a motion for "any ... reason justifying relief from the operation of the judgment." (D.I. 13 at 1) However, a motion made under Rule 60(b)(6) must be made within a reasonable time. See Fed. R. Civ. P. 60(b)(6); Moolenaar v. Gov't of the Virgin Islands, 822 F.2d 1342, 1346 (3d Cir. 1987). "'What constitutes [a] 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and [the consideration of] prejudice [if any] to other parties.'" Dietsch, 2 F.Supp.2d at 633 (quoting Devon v. Vaughn, No. 94-2534, 1995 WL 295431, at *2 (E.D. Pa. Apr. 27, 1995))(citation omitted). "Relief under Rule 60(b)(6) may only be granted under

extraordinary circumstances where, without relief, an extreme and unexpected hardship would occur." Charowsky v. Kurtz, No. 98-5589, 2001 WL 187337, at *7 (E.D. Pa. Feb. 23, 2001)(citing Lasky v. Continental Prod. Corp., 804 F.2d 250, 256 (3d Cir. 1986)). To allow litigants more leniency in this respect would undermine the overriding interest in the finality of judgments. See id.

Bruton filed the pending motion on September 9, 2004, alleging that from at least July 2003 until July 2004, he was classified to the Security Housing Unit ("SHU"). (D.I. 13 at 3) Bruton alleges that he was mentally incompetent during this period. (Id.)

Bruton further alleges that he was denied access to

persons trained in the law or inmate paralegals while housed in the SHU Building. Further, Plaintiff was [also] in constant threat by the same state actors who [assaulted] him and this also was a factor in Plaintiff's decision to wait until his release from SHU unit as is the case now before this Court.

(Id.) Finally, Bruton alleges that in within 90 days of filing the motion, he was moved from the SHU to the general population, earned a job and was no longer mentally incompetent. (Id.)

On February 25, 2003, Bruton filed the Complaint and paid the \$150 filing fee in full. (D.I. 1) On March 7, 2003, the Court entered an Order requiring Bruton to complete and return an original U.S. Marshal ("USM") 285 Form for each Defendant, as well as the Attorney General for the State of Delaware, within 120 days from the date of the Order. (D.I. 4) Because Bruton paid the filing fee, the Court also ordered him to reimburse the United States Marshal for the cost of serving the Complaint. (Id.) On April 9, 2003, the Court received a letter from Bruton's father stating that Bruton feared retaliation from the Defendant, and, therefore, could not complete the USM 285 forms

as ordered. (D.I. 5) Consequently, on April 11, 2003, the Court entered an order scheduling a pretrial conference for April 15, 2003 at 2:00 p.m. (D.I. 6) The Court also directed the Clerk of the Court to prepare the required USM 285 forms, as well as an application to proceed in forma pauperis. The completed forms were presented to Bruton at the pre-trial conference for his signature.

However, Bruton refused to sign any of the completed forms, even though the Court specifically explained that the signed form USM 285 forms were required in order for the United States Marshal to serve the Complaint. Therefore, the Court directed Bruton to take the completed forms with him and to think about signing them. On April 17, 2003, the Court entered an Order to Show Cause requiring Bruton to sign and return the USM 285 forms, as well as the application to proceed in forma pauperis, by June 25, 2003, or the case would be dismissed. (D.I. 8) On July 1, 2003, Bruton filed the application to proceed in forma pauperis, but failed to return the required USM 285 forms. (D.I. 9) On July 2, 2003, the Court dismissed the Complaint without prejudice. (D.I. 10)

Although Bruton asserts that, after the pre-trial conference, he was classified to the SHU and mentally incompetent until three months prior to filing the pending motion, the record contradicts his claims. On August 13, 2003, Bruton filed a letter with the Court requesting that the Court refund the \$150 dollar filing fee stating, "I'm currently think about revising that Law Suit. ... My Law Suite [sic] was dismissed because I wouldn't sign the paper work that the Court sent to me." (D.I. 11) This letter is typed, rather than handwritten, indicating that Bruton had access to the prison law library, or at least to an inmate paralegal. Furthermore, the return address on the envelope in which

Bruton did not bring the Motion for Reconsideration in a reasonable time as required under Rule 60(b)(6). Furthermore, Bruton has not presented "extraordinary circumstances where, without relief an extreme and unexpected hardship would occur." Charowsky, 2001 WL 187337 at *7. Therefore, Bruton's Motion for Reconsideration must be denied.

NOW THEREFORE, at Wilmington this 31st day of March, 2005, IT IS HEREBY ORDERED that:

1. Bruton's Motion for Reconsideration (D.I. 13) is DENIED.
2. The Clerk of the Court shall mail a copy of this Memorandum Order forthwith to Bruton.


UNITED STATES DISTRICT JUDGE