IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ROBERT VINCENT GADSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-154-KAJ
	)	
U.S. ARMY SECRETARY, et al.,	)	
	)	
Defendant,	)	

MEMORANDUM ORDER

Presently before me is plaintiff Robert Vincent Gadson's ("Gadson") "Motion # 1 & Motion # 2 All Incorporated." (D.I. 9) Gadson appears to be requesting both leave to reopen this case and that I remove myself from this action. (Id.) For the reasons stated below, I will deny the motion.

I. BACKGROUND

Gadson is a prisoner currently incarcerated at the Federal Correctional Institution, Fort Dix, in Fort Dix, New Jersey. His Federal Id. No. is 31101-066. On January 30, 2003, Gadson filed a complaint under 42 U.S.C. § 1983, along with an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (D.I. 1; D.I. 2) On February 12, 2003, I denied Gadson's request to proceed in forma pauperis because Gadson has had eight prior suits dismissed as frivolous, malicious or for failure to state a claim upon which relief may be granted and the instant complaint does not allege an imminent threat of physical injury or death.[1] I ordered Gadson to

[1] The following cases were listed in the Order dated February 12, 2003 as the basis for the denial of Gadson's request for leave to proceed in forma pauperis: Gadson v. STEPA

pay the $150 filing fee within thirty days or the complaint would be dismissed. (D.I. 4) Gadson did not pay the filing fee as ordered and on March 25, 2003, I dismissed the complaint. (D.I. 6) Gadson filed the pending motion on July 15, 2004. (D.I. 9) Gadson appears to be arguing that his claims should be liberally construed and that I am biased against him. (Id.)

II. DISCUSSION

A. Gadson's Motion to Reopen the Case

Although Gadson has not specified which Rule of Civil Procedure he is relying on in bringing his Motion to Reopen this case, it appears that he is bringing the motion under Fed. R. Civ. P. 60 (b).[2] "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 grounds not relevant here by Roman v. Jeffes, 904 F.2d 192, 195 n.4 (3d Cir. 1990)).

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

Personnel Director, No. 89-152, 1989 WL 3485 (E.D. Pa. January 12, 1989); Gadson v. Small Business Administration, No. 02-1964 (D. D.C. dismissed October 4, 2002); Gadson v. Federal Reserve Bank, No. 99-866 (N.D. Ga. dismissed May 14, 1999); Gadson v. Las Vegas Boxing Commission, No. 99-297 (N.D. Ga. dismissed May 3, 1999); Gadson v. World Bank, No. 97-1419 (N.D. Ga. dismissed October 24, 1997); Gadson v. Bureau of Prisons, No. 93-378 (D. D.C. dismissed February 22, 1993); Gadson v. Rangel, No. 92-2672 (D. D.C. dismissed November 30, 1992); and Gadson v. United States of America, No. 90-1654 (D. S.C. dismissed May 13, 1992).

[2] 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."

> (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 Gadson's complaint was entered on February 12, 2003. Gadson filed his Motion Reopen the Case on July 15, 2004. Gadson does not give any reason for the delay in filing the motion. (D.I. 9)

It is unclear which basis for relief Gadson is relying on in bringing his motion. Gadson appears to be arguing that he complaint should be liberally construed. (D.I. 9) Giving Gadson's motion a generous reading, only Rule 60(b)(6) could plausibly be grounds to reopen this case. 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, *2 (E.D. Pa. Apr. 27, 1995)(citation omitted). "Relief under Rule 60(b)(6) may only be granted under extraordinary circumstances where, without the relief, an extreme and unexpected hardship would occur." Charowsky v. Kurtz, No. 98-5589, 2001 WL 187337, *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 that respect would undermine the overriding interest in the finality of judgments. See id.

I find that Gadson has not filed the pending motion to reopen within a "reasonable time" as required by Rule 60(b). Gadson filed this motion over one year after the order in question was entered. Without compelling justification, such a delay is not reasonable under the rule. See Moolenaar v. Gov't of the Virgin Islands, 822 F.2d at 1348 (finding 60(b)(6) motion brought almost two years after to be untimely); Martinez-McBean v. Gov't of the Virgin Islands, 562 F.2d 908, 913 n.7 (3d Cir. 1977)(reversing grant of 60(b)(6) motion and expressing doubts that reasonable time requirement was met when district court granted motion two and a half years after the disputed order was entered); Dietsch, 2 F.Supp.2d at 633 (finding that 60(b) motion filed more than two years after contested order was not within a reasonable time); United States v. Real Property Located at 1323 South 10th Street, Philadelphia, No. 91-5848, 1998 WL 470161, *2 (E.D. Pa. Aug. 11, 1998) (finding four year delay unreasonable). In this case, Gadson did not file an appeal. Nor has he explained the delay in filing this motion. He merely argues that his complaint should be liberally construed. (D.I. 9)

Reviewing the facts of this case, Gadson's failure to provide any reason for delay in filing the pending motion, the interest in finality and prejudice to the defendants, I find that Gadson did not bring the Motion to Reopen the Case in a reasonable time as required by Rule 60(b). Furthermore, Gadson has not presented "extraordinary circumstances where, without the relief an extreme and unexpected hardship would occur." Charowsky, 2001 WL 187337 at *7. Therefore, Gadson's Motion to Reopen the Case will be denied.

B. Gadson's Request for Recusal

Gadson cites both 28 U.S.C §§ 144 and 455 as the statutory basis for his request for recusal. Therefore, I will analyze the request under both § 144 and § 455. In order to be disqualifying, both § 144 and § 455 require that the alleged bias or prejudice stem from an extrajudicial source. See Liteky v. United States, 510 U.S. 540 (1994). "Extrajudicial source" means a source outside the present or *prior* judicial proceedings. See id. at 555 (emphasis added).

Section 144 requires that a party seeking recusal file a "timely and *sufficient* affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." See 28 U.S.C. § 144 (emphasis added). "Conclusory allegations need not be accepted as true." Jones v. Pittsburgh Nat. Corp., 899 F.2d 1350, 1356 (3d Cir. 1990)(citing United States v. Vespe, 868 F.2d 1328, 1340 (3d Cir. 1989)). In this case, Gadson's affidavit is not sufficient to support his claims. Gadson has not presented any facts to support his motion. He has merely presented his conclusory allegation that I am "prejudice against black [sic]." (D.I. 9 at 2) He appears to base his theory, as well as his request for recusal, not on any tangible evidence, but on judicial rulings in his prior cases.

However, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. at 555 (citing United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)). The Supreme Court explained that judicial rulings "in and of themselves can only in the rarest circumstances evidence the degree of favoritism or antagonism required" to prove bias. Id. Gadson's bare allegation that I am biased against him because of his race has no merit, and is insufficient to support his claim.

Under § 455, "any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455. Section 455 requires a judge to raise the issue of bias sua sponte. "Under this section a judge must consider whether a reasonable person knowing all the circumstances would harbor doubts concerning the judge's impartiality." Jones, 899 F.2d at 1356 (citing United States v. Dalfonso, 707 F.2d 757, 760 (3d Cir. 1983)). Again, other than his bare allegation, Gadson has offered no evidence to support his claim that I harbor a bias against him. Consequently, I find that no reasonable person, knowing all the circumstances, would harbor doubts concerning my impartiality.

Gadson has failed to allege sufficient facts to prove that I have a personal bias or prejudice against him. Furthermore, Gadson has failed to show that a reasonable person, knowing all the circumstances, would harbor doubts concerning my impartiality. Therefore, I shall deny his request for recusal.

NOW THEREFORE, for the reasons discussed**,** IT IS HEREBY ORDERED this 1st day of December, 2004, that Gadson's "Motion #1 & Motion #2 All Incorporated" (D.I.9) is **DENIED.**

Kent A. Jordan
UNITED STATES DISTRICT JUDGE