

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOHN R. DRAYER, JR., )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 03-306-KAJ  
 )  
 STATE OF DELAWARE, DEPT. OF )  
 CORRECTION, CUSTODY AND )  
 SUPERVISION, PROBATION, )  
 VOLUMOUS DEFS, U.S. DISTRICT )  
 CTS. DEL. 98-264-RRM, and )  
 TANYITA NESBIT, )  
 )  
 Defendants. )

**MEMORANDUM ORDER**

Presently before the Court are the plaintiff, John R. Drayer, Jr's, ("Drayer") "Motion for Extension of Time to File Rehearing," "Petition for Rehearing," "Motion for Extension of Time to File Notice of Appeal," "Rule 21: Writ of Mandamus & Prohibition & Extraordinary Writ," "FRCP 60 Relief from Judgment," "FRCP 62/H Stay, Recall, Reopen, Judgment," "Motion for Attys Fees & Expenses 54 D/2," and "Application Ct for a Determination & Direction under FRCP 54/B" (D.I. 54; D.I. 55; D.I. 57; D.I. 58; D.I. 60; D.I. 62; D.I. 63; D.I. 64). For the reasons stated below, I will deny Drayer's motions.

**I. BACKGROUND**

On October 13, 2004, I granted Drayer's motion for leave to proceed in forma pauperis and dismissed the complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). (D.I. 51) On October 28, 2004, Drayer filed the "Motion for Extension of Time to File Rehearing." (D.I. 54)

On October 29, 2004, Drayer filed the “Petition for Rehearing” which I construe as his first Motion for Reconsideration. (D.I. 55) On November 2, 2004, Drayer filed the Motion to Extend Time to File Notice of Appeal. (D.I. 57) Drayer also filed the “Rule 21: Writ of Mandamus & Petition & Extraordinary Writ,” as well as the “FRCP 60 Relief from Judgment,” which I construe as his second and third Motions for Reconsideration. (D.I. 58; D.I. 60) On November 8, 2004, Drayer filed the “FRCP 62/H Stay, Recall, Reopen Judgment” which I construe as his fourth Motion for Reconsideration. (D.I. 62) Drayer also filed the “Motion for Atty Fees & Expenses 54 D/2,” and a document titled “Application Ct for a Determination & Direction under FRCP 54/B” which I construe as his fifth motion for reconsideration. (D.I. 63; D.I. 64) On November 9, 2004, Drayer filed a Notice of Appeal.<sup>1</sup> (D.I. 66) Because Drayer has filed five Motions for Reconsideration as well as a Notice of Appeal, I shall deny the “Motion for Extension of Time to File Petition for Rehearing” and the “Motion to Extend Time to File Notice of Appeal” as moot. (D.I. 54; D.I. 57)

## **II. DISCUSSION**

### **A. Drayer’s Motions to Reopen the Case**

Drayer has indicated that he is relying upon Fed. R. Civ. P. 54(b), Fed. R. Civ. P. 60, and Fed. R. Civ. P. 62(h) in bringing his Motions for Reconsideration this case.<sup>2</sup> Drayer appears to

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<sup>1</sup> The Court of Appeals has stayed the Appeal pending the disposition of Drayer’s effort to reopen and reconsider this Court’s earlier decisions. (*See* D.I. 70.)

<sup>2</sup> Neither Fed. R. Civ. P. 54(b), nor Fed. R. Civ. P. 62(h) apply to this case. Fed. R. Civ. P. 54 (b) authorizes the courts to enter “final judgments as to one or more but fewer than all of the claims or parties,” when there are multiple claims or parties involved in a case. When a court issues such an order, it may stay enforcement of the judgment until “the entry of a subsequent judgment or judgments ... to secure the benefit thereof to the party in whose favor the judgment is entered.” Fed. R. Civ. P. 62(h). I have dismissed this case as to all claims and parties because I found that Drayer’s claims are frivolous.

by relying upon Fed. R. Civ. P. 60(b) in bringing his Motions for Reconsideration. "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 (D. N.J. 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:

- (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 Drayer's complaint was entered on October 13, 2004. (D.I. 51) Drayer filed his first Motion for Reconsideration on October 29, 2004. (D.I. 55) Drayer filed his second and third Motions for Reconsideration on November 2, 2004. (D.I. 58; D.I. 60) Drayer filed his fourth and fifth Motions for Reconsideration on November 8, 2004. (D.I. 62; D.I. 64) Drayer has not indicated which section of Fed. R. Civ. P. 60(b) he is relying upon in bringing his motion. However, based on his arguments that my decision was unfair, it appears

that he is relying upon Fed. R. Civ. P. 60(b)(6). Drayer filed his motions in a timely manner.

"As a general rule, motions for reconsideration should be granted 'sparingly.'" Stafford v. Noramco of Delaware, Inc., No. 97-376-GMS, 2001 WL 65738 at \*1 (D. Del. Jan. 10, 2001) (citing Karr v. Castle, 768 F.Supp. 1087, 1090 (D. Del. 1991)). The Third Circuit has noted that the purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). The purpose of the motion for reconsideration is not to "rehash arguments already briefed." Dentsply Int'l. Inc. v. Kerr Mfg. Co., 42 F.Supp.2d 385, 419 (D. Del. 1999). In order to succeed, Drayer must show that at least one of the following criteria applies: (1) a change in the controlling law; (2) availability of new evidence not available when the Court made its decision; or (3) need to correct a clear error of law or fact or to prevent manifest injustice. Skretvedt v. E.I. Dupont de Nemours and Co., No. 98-61-MPT, 2000 WL 33341051 at \*4 (D. Del. October 31, 2000)(citing Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d at 677)).

In support of his motions, Drayer appears to be arguing that my decision regarding his complaint was unfair. (D.I. 55; D.I. 58; D.I. 62). Drayer also appears to be arguing that I should grant him the relief he requests because has no money and he is homeless. (D.I. 60). Drayer has not provided me with any new information alleging that I made an error sufficient to grant his Motions for Reconsideration. Therefore, I will deny Drayer's Motions for Reconsideration.

## **B. Drayer's Motion for Attorney's Fees and Expenses**

Drayer requests attorney's fees and expenses in the amount of \$821,250. (D.I. 63)

Drayer argues that he has been litigating this case for nine years at the cost of \$250 a day.

Drayer requests that he be awarded "attorneys fees" not only for this case, but also for the other cases he has filed in this Court which have been previously dismissed. (Id.) Because I have dismissed this complaint as frivolous, Drayer is not entitled to recoup any expenses associated with this litigation. See Richardson v. Averitte, 04-038-C, 2004 WL 1637979 (N.D. Tex. Mar. 2, 2004)(dismissing pro se complaint as frivolous and denying request for attorney's fees); see also Aronson v. United States Dep't of Housing & Urban Development, 866 F.2d 1, 4, (1<sup>st</sup> Cir. 1989)(noting that all circuits that have considered the question, except the District of Columbia Circuit, have held that non-lawyer pro se litigants are not entitled to attorney's fees in FOIA cases). Therefore, I will deny Drayer's request for attorney's fees and expenses.

### **C. Sanctions**

Drayer is no stranger to the civil justice system. Drayer has filed two other pro se civil rights actions in this Court which have been dismissed because he failed to comply with the Federal Rules of Civil Procedure. See Drayer v. Attorney General, CA No. 03-282-KAJ, (D. Del. dismissed March 15, 2004); Drayer v. Admiral Hotel, CA No. 98-264-KAJ (D. Del. dismissed Dec. 9, 1998). Both complaints allege that the named defendants violated Drayer's constitutional rights regarding the same conviction and sentence which is the subject of this complaint. (Id.) Furthermore, I have denied Drayer's Petition for Writ of Habeas Corpus. See Drayer v. Kearney, CA No. 02-1602-KAJ Mem Order (D. Del. September 30, 2003). Drayer has also filed two civil rights actions in the United States District Court for the District of Maryland which have been dismissed as frivolous. See Drayer v. Anne Arundel County Political

Subdivision, CA No. 00-1221-FNS (D. Md. dismissed May 2, 2000); Drayer v. Anne Arundel County Political Subdivision, CA No. 00-3492-FNS (D. Md. dismissed Dec. 5, 2000).

Sanctions are appropriate when a pro se litigant has a history of filing multiple frivolous claims. See Daniel v. Federal Bureau of Investigation, No. 3-03-CV-1281-N, 2003 WL 21436479 (N.D. Tex. June 17, 2003)(citing Fed. R. Civ. P. 11; In re Green, 669 F.2d 779, 787 (D. D.C. 1981)). “Litigants who abuse the judicial process are ‘not entitled to sue and appeal without paying the normal filing fee – indeed are not entitled to sue and appeal, period.’” Id. (quoting Free v. United States, 879 F.2d 1535, 1536 (7<sup>th</sup> Cir. 1989)). Furthermore, “[f]iling claims against the same party after their claims have been dismissed in a prior actions as without legal and/or factual merit, as in the present case, may result in monetary sanctions.” Couloute v. Sawyer, No. 3:02-CV-1755-PC, 2003 WL 22490056 \*1 (D. Conn. Feb. 7, 2003)(internal citations omitted). Although I have ordered Drayer to stop filing motions in his closed cases, he continues to attempt to do so. Consequently, I am ordering Drayer not to file any further motions or other pleadings in this closed case. Furthermore, I am warning him that any further attempts to reopen this matter, as well as any of his other closed matters may result in sanctions, including an order prohibiting him from filing any civil actions without paying the filing fee or obtaining prior authorization from a district judge.

NOW THEREFORE, for the reasons discussed, IT IS HEREBY ORDERED this 14<sup>th</sup> day of December, 2004, that:

1. Drayer’s Motion for Extension of Time to File Petition for Rehearing is **DENIED** as **MOOT**. (D.I. 54)
2. Drayer’s Motion for Extension of Time to File Appeal is **DENIED** as **MOOT**. (D.I.

57)

3. Drayer's Motions for Reconsideration are **DENIED**. (D.I. 55; D.I. 58; D.I. 60; D.I.

62)

4. Drayer's "Motion for Atty Fees & Expenses" is **DENIED**. (D.I. 63)

5. Drayer shall not file any motions, letters or other correspondence related to this closed matter, absent prior Court approval. The Clerk of the Court shall reject any motions, letters or other correspondence related to this closed matter unless Drayer has court approval to file the document.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware