

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TONY A. WILSON, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 99-614-JJF
 :
 DEPARTMENT OF CORRECTION OF :
 DELAWARE, ALAN MACHTINGER, :
 JOE PAESANT, MICHAEL :
 MCFARLAND, RON TURNER, :
 THOMAS G. BAILOR, JAMES :
 SUPIETT, MR. KEEN, FOREST :
 JACOBS, MR. KUMINSKI, DAVE :
 STEBBINS, PINKERTON, INC., :
 UNIDENTIFIED, :
 :
 Defendants. :

Tony A. Wilson, Pro Se Plaintiff.

Stuart B. Drowos, Esquire, Deputy Attorney General, DELAWARE
DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

July 24, 2001

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court are four motions filed by Plaintiff, Tony A. Wilson, a Motion For Relief From Judgment Or Order Pursuant To Rule 60(b)(1) (D.I. 51), a Motion To Amend Complaint Pursuant To Rule 15(a)(b) (D.I. 52), a Motion To Amend Judgment Pursuant To Rule 59(e) (D.I. 53), and an Amended Motion To Amend Judgment Pursuant To Rule 59(e) (D.I. 54). For the reasons set forth below, Plaintiffs' Motions will be denied.

BACKGROUND

By Memorandum Opinion and Order dated March 30, 2001, the Court granted the State Defendants' Motion To Dismiss Plaintiff's Complaint. (D.I. 48, 49). By his Complaint, Plaintiff alleged that Defendants violated Title VII and his Fourteenth Amendment due process rights by rescinding an offer to employ Plaintiff in the Delaware Department of Corrections. Concluding that Plaintiff could not maintain an action under Title VII against the individual Defendants and that Plaintiff could not establish that non-members of the protected class were treated more favorably than Plaintiff, the Court dismissed Plaintiff's Title VII claims. With regard to Plaintiff's claim under the Fourteenth Amendment, the Court concluded that Plaintiff had no property interest in

employment by the Delaware Department of Corrections, because Plaintiff was never hired by the Department and his offer of employment was conditional.

Following the Court's March 30th decision, Plaintiff filed the instant Motions seeking to amend his Complaint and obtain relief from the Court's decision granting Defendants' Motion To Dismiss. Before the Motions were responded to by the State Defendants, Plaintiff filed a Notice of Appeal (D.I. 56). Thereafter, the State Defendants filed their Response Brief (D.I. 60) and Plaintiff filed his Reply Brief (D.I. 61). Because the Motions have now been fully briefed by the parties, they are ripe for the Court's consideration.

DISCUSSION

I. Motion For Relief From Judgment Under Rule 60(b)

In relevant part, Federal Rule of Civil Procedure 60(b) provides:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by 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 reasons justifying relief from the operation of the judgment. 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.

Fed. R. Civ. P. 60(b). The decision to grant or deny relief pursuant to Rule 60(b) is committed to the "sound discretion" of the district court. Ross v. Meagan, 638 F.2d 646, 648 (3d Cir. 1981) (citations omitted); United States v. Witco Corp., 76 F. Supp. 2d 519, 527 (D. Del. 1999) (citations omitted). However, the court's exercise of its discretion is not unfettered. Moolenar v. Government of the Virgin Islands, 822 F.2d 1342, 1346 (3d Cir. 1987) (recognizing that Rule 60(b) "does not confer upon the district courts a standardless residual of discretionary power to set aside judgments"). In applying Rule 60(b), the court should be cognizant that final judgments are not to be disturbed lightly and the procedures in Rule 60(b) are not meant to be a substitute for an appeal. Kock v. Government of the Virgin Islands, 811 F.2d 240, 246 (3d Cir. 1987). Thus, relief under Rule 60(b) is considered extraordinary and is only warranted in special circumstances sufficient to overcome the overriding interest in the finality of judgments. Harris v. Martin, 834 F.2d 361, 364 (3d Cir. 1987) (citations omitted); Moolenaar, 822 F.2d at 1346

(citations omitted).

By his Rule 60 Motion, Plaintiff contends that the Court should grant him relief from the March 30th decision granting Defendants' Motion To Dismiss, because Plaintiff has established mistake and excusable neglect. Specifically, Plaintiff contends that he made an excusable mistake by failing to include in his Complaint in this Court an allegation contained in his Complaint before the Equal Employment Opportunity Commission ("EEOC") that "[t]he Department of Correction and the Department of Probation and Parole kept the Probation and Parole Officer (I) [sic] position open that was offered to Mr. Wilson and sought applications from other applicants who possessed the same qualifications as Mr. Wilson." (D.I. 51 at ¶ 2) (emphasis in original).

Even if the Court were to consider Plaintiff's omission of this allegation as a mistake within the meaning of Rule 60(b), the Court concludes that Plaintiff is not entitled to relief from the Court's decision of March 30, 2001. To establish a prima facie case of discrimination under Title VII, Plaintiff must show that (1) he is a member of a protected class, (2) he was qualified for a position that the employer was trying to fill, and (3) individuals who were not

members of the protected class were treated more favorably than Plaintiff. Goosby v. Johnson & Johnson Medical, Inc., 228 F.3d 313, 318 (3d Cir. 2000). Accepting Plaintiff's allegation as true that Defendants sought applications from other individuals for the same position as Plaintiff and that other individuals may have been hired in lieu of Plaintiff, the Court concludes that Plaintiff's allegation is insufficient to establish the third prong of the prima facie case. Plaintiff's bare allegation fails to specify that the individuals he refers to were non-members of the protected class, and Plaintiff fails to identify any such individuals.

To the extent that Plaintiff contends that his allegation should be sufficient to establish a genuine issue of material fact, the Court likewise rejects Plaintiff's argument. Plaintiff offers no facts or evidence to support his allegation or to establish that non-members of the protected class were treated more favorable than Plaintiff. Accordingly, the Court concludes that Plaintiff is not entitled to relief from the Court's March 30, 2001 judgment under Rule 60(b).

II. Plaintiff's Motions To Amend Judgment Pursuant To Rule 59(e)

To obtain relief under Federal Rule of Civil Procedure

59(e), Plaintiff must establish one of three threshold requirements: (1) there is an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to correct the Court's clear error of law or prevent manifest injustice. Pipe Liners, Inc. v. Pipelining Products, Inc., 2000 WL 1251907 (D. Del. Aug. 9, 2000) (Robinson, J.) (citing North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)).

In this case, Plaintiff has filed two Motions pursuant to Rule 59(e). By his Motions, Plaintiff reiterates the same allegations he made in his Rule 60(b) Motion. In addition, Plaintiff contends that the Court's footnote in its Memorandum Opinion addressing the service of process issue in this case was erroneous.

To the extent that Plaintiff's Rule 59(e) motion duplicates his claim under Rule 60(b), the Court rejects Plaintiff's argument for the reasons discussed previously. As for Plaintiff's argument regarding the service of process issue, the Court likewise rejects Plaintiff's argument. By its footnote, the Court stated that despite the service of process issue regarding four of the Defendants, the Court would nevertheless address the issues raised by Defendants' motion. (D.I. 48 at 3, n.1). The Court then concluded that,

although there was a question as to whether four of the Defendants were properly served, Plaintiff could not maintain his lawsuit against the individual Defendants because Title VII does not permit redress against individuals. As such, the Court did not rest its decision regarding Defendants' Motion to dismiss on the service of process issue, and therefore, any claim by Plaintiff that the Court erred on the service of process issue would not affect the Court's decision in this case. Accordingly, the Court concludes that Plaintiff is not entitled to an amended or altered judgment under Rule 59(e).

III. Plaintiff's Motion To Amend Complaint

By his Motion To Amend Complaint, Plaintiff contends that the Court should permit Plaintiff to amend his Complaint to include the allegations raised by Plaintiff in his Second Affidavit. Plaintiff appears to contend that this affidavit establishes the facts required for Plaintiff to demonstrate a prima facie case of discrimination.

Plaintiff's Motion To Amend relies on both Rule 15(a) and Rule 15(b) of the Federal Rules of Civil Procedure. However, Rule 15(b) only contemplates amendments made during or after a trial, as a result of issues raised during the course of the trial, which are not covered in the original pleadings. "Rule 15(b) . . . is limited to situations where the issue has been

tried. [Where] no trial has occurred, [plaintiff] can find no solace in Rule 15(b)." Vosgerichian v. Commodore Internat'l Ltd., 1998 WL 966026, *3 (D.N.J. Nov. 6, 1998) (denying motion to amend based on Rule 15(b) where no trial has begun and plaintiff's motion to amend was made in response to a summary judgment motion). Because no trial occurred in this case, the Court cannot permit Plaintiff to amend his Complaint under Rule 15(b).

As for an amendment pursuant to Rule 15(a), Rule 15(a) requires the Court to freely permit amendments "when justice so requires." Fed. R. Civ. P. 15(a). However, the Court may consider such factors as undue delay, undue prejudice to the opposing party and futility of the amendment in determining whether leave to amend should be granted. Vosgerichian, 1998 WL 966026 at *3. Notwithstanding the fact that the timing of Plaintiff's Motion To Amend suggests the likelihood of undue delay and prejudice to the nonmovants in this case, the Court has reviewed the Second Affidavit offered by Plaintiff.

After reviewing Plaintiff's Second Affidavit, the Court concludes that the amendment proposed by Plaintiff to incorporate the allegations of his Second Affidavit into his Complaint would be futile. Plaintiff's Second Affidavit reiterates legal arguments regarding Plaintiff's claims and

does not add any allegations or evidence pertaining to the third prong of the prima facie case under Title VII. Because, Plaintiff's Second Affidavit does nothing to advance his claims, the Court concludes that the amendment Plaintiff seeks would be futile. Accordingly, the Court will deny Plaintiff's Motion To Amend Complaint.

CONCLUSION

For the reasons discussed, Plaintiff's Motion For Relief From Judgment Or Order Pursuant To Rule 60(b)(1) (D.I. 51), Motion To Amend Complaint Pursuant To Rule 15(a)(b) (D.I. 52), Motion To Amend Judgment Pursuant To Rule 59(e) (D.I. 53), and Amended Motion To Amend Judgment Pursuant To Rule 59(e) (D.I. 54) will be denied.

An appropriate Order will be entered.

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 UNIDENTIFIED, :
 :
 Defendants. :

ORDER

At Wilmington, this 24 day of July 2001, for the reasons
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Plaintiff's Motion For Relief From Judgment Or Order Pursuant To Rule 60(b)(1) (D.I. 51) is DENIED.
2. Plaintiff's Motion To Amend Complaint Pursuant To Rule 15(a)(b) (D.I. 52) is DENIED.
3. Plaintiff's Motion To Amend Judgment Pursuant To Rule 59(e) (D.I. 53) is DENIED.
4. Plaintiff's Amended Motion To Amend Judgment Pursuant To Rule 59(e) (D.I. 54) is DENIED.

UNITED STATES DISTRICT JUDGE