[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10223
Non-Argument Calendar

D.C. Docket No. 2:14-cv-00067-MHH-HGD

GREGORY JAMES EDDINS,

Plaintiff - Appellant,

versus

STATE OF ALABAMA,
CHERYL PRICE,
Warden III,
LLOYD HICKS,
Warden I,
ROY RODHAM,
MD,
JAMES BUTLER, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(October 30, 2017)

Before MARCUS, JILL PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Gregory Eddins, an Alabama inmate proceeding *pro se*, appeals the district court's denial of his Federal Rule of Civil Procedure 60(b) motion for relief from the court's dismissal of his amended 42 U.S.C. § 1983 complaint. In his appeal, Eddins argues that the district court erred in dismissing his amended complaint and abused its discretion in denying his Rule 60(b) motion. After careful consideration, we affirm the district court.

I.

Eddins filed a *pro se* § 1983 complaint against the state of Alabama in January 2014. He later amended his complaint, alleging, among other things, that the wardens and medical care providers at the Donaldson Correctional Facility had failed to provide him with treatment for his diabetes and thus were deliberately indifferent to his medical needs in violation of the Eighth Amendment. The denial of treatment, he alleged, could result in his death, loss of a limb, or blindness. Eddins named as defendants in their official and individual capacities wardens Cheryl Price and Lyod Hicks, along with medical providers Roy Rodham, M.D.; James Butler, NP; and the Director of Nursing, Mrs. Claybourn. Based on these allegations, Eddins sought declaratory relief, injunctive relief, and damages.

A magistrate judge recommended that Eddins's amended complaint be dismissed "as frivolous and/or for failure to state any claims upon which relief may be granted . . . ." Doc. 12 at 12.[1] Over Eddins's objections, the district court adopted the magistrate judge's recommendation and dismissed the amended complaint. As relevant here, the district court found that Eddins had not alleged any injury based on his untreated diabetes and thus had failed to plead an essential element of an Eighth Amendment claim. The court also noted that insofar as Eddins based his claim on the potential for future injury, his claim was not ripe. The court entered a final judgment on September 24, 2015.

Although Eddins initiated an appeal of the district court's order, he never pursued it, and it was eventually dismissed. He filed an untimely notice of appeal on November 16, 2015,[2] asserting that he had not received notice of the district court's final judgment. We remanded the case to the district court to determine whether Eddins was entitled to reopen the appeal period, and the district court determined he was. But Eddins failed to move for leave to proceed on appeal within the required time period, so we dismissed his appeal for want of prosecution.

[1] Citations to "Doc." refer to docket entries in the district court record in this case.

[2] *See* Fed. R. App. P. 4(a)(1)(A) (requiring a notice of appeal to be filed "within 30 days after entry of the judgment or order appealed from").

After we dismissed his appeal, Eddins filed a motion in the district court for relief from judgment under Federal Rule of Civil Procedure 60(b)(2), based on newly discovered evidence. Eddins asserted that, following the district court's dismissal of his amended complaint, his former attorney had "presented him with" evidence concerning his diabetic condition. Doc. 35 at 1. Eddins argued that this new evidence revealed he may have hypoglycemia, his eyesight was diminishing, he had tested positively for diabetes, and defendants Rodham, Butler, and Claybourn were aware of his condition.

Eddins attached various medical records to support his motion, which spanned from 2013 to March 2015, including: a March 2015 "progress note" from Rodham, indicating that Eddins had been treated for eye pain and that he might have hypoglycemia; results from several blood glucose tests conducted between 2013 and March 2015; nurses' notes from 2013 to January 2015 stating that Eddins was suffering from eye pain and blurry vision; entries from 2013 in Eddins's personal "Medical Journal" describing his various symptoms; and two grievance forms from January and March 2015, in which Eddins complained about receiving inadequate treatment. The district court denied Eddins's Rule 60(b) motion, finding that the evidence was not newly discovered because he possessed "actual knowledge" of all of the newly presented evidence prior to the court's entry of final judgment. Doc. 36 at 5-6.

Eddins appealed. In his appeal, Eddins challenges the denial of his Rule 60(b)(2) motion.[3]

II.

We review the denial of a motion for relief from judgment under Rule 60(b) for an abuse of discretion. *Maradiaga v. United States*, 679 F.3d 1286, 1291 (11th Cir. 2012). The abuse of discretion standard requires us to affirm unless we find that the district court made a clear error of judgment or applied the wrong legal standard. *Rance v. Rocksolid Granit USA, Inc.*, 583 F.3d 1284, 1286 (11th Cir. 2009). "An appeal of a ruling on a Rule 60(b) motion . . . is narrow in scope, addressing only the propriety of the denial or grant of relief," not the merits of "the underlying judgment for review." *Am. Bankers Ins. Co. of Fla. v. Northwestern Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999).

[3] Eddins also argues that the district court erred in denying his § 1983 claim for failing to state a claim upon which relief could be granted. This challenge, however, is beyond the scope of Eddins's appeal. Federal Rule of Appellate Procedure 4(a)(1)(A) requires that a notice of appeal be filed within 30 days after entry of the judgment or order being appealed. Eddins's notice of appeal was filed more than one year after the dismissal of his amended complaint. Accordingly, the instant notice of appeal is untimely as to the district court's dismissal order. Although Eddins timely appealed the denial of his Rule 60(b) motion, which we consider below, that appeal "may not be used to challenge mistakes of law which could have been raised on direct appeal." *Am. Bankers Ins. Co. of Fla. v. Nw'ern Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999). Therefore, we do not consider the district court's dismissal of Eddins's amended complaint.

III.

Eddins argues that the district court abused its discretion in deciding that the evidence he presented was not newly discovered for the purposes of Rule 60(b). We disagree.

Rule 60(b) allows for relief from judgment in certain circumstances, including where a party "discover[s] evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial." Fed. R. Civ. P. 60(b)(2). To obtain relief under Rule 60(b) based on newly discovered evidence, the movant must satisfy a five-part test:

> (1) [T]he evidence must be newly discovered since the trial; (2) due diligence on the part of the movant to discover the new evidence must be shown; (3) the evidence must not be merely cumulative or impeaching; (4) the evidence must be material; and (5) the evidence must be such that a new trial would probably produce a new result.

Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316 (11th Cir. 2000). Because granting a Rule 60(b) motion is an "extraordinary" measure, these five requirements "must be strictly met." *Id.* With respect to the first requirement, we have held that a movant may not use a Rule 60(b) motion to "present evidence that could have been raised prior to the entry of judgment." *Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1275 (11th Cir. 2014) (quoting *Richardson v. Johnson*, 598 F.3d 734, 740 (11th Cir. 2010)).

Eddins argues that the evidence he presented in his 60(b) motion was "newly discovered" because he received the documents in April 2016, after the district court dismissed his amended complaint. As the district court found, however, none of this evidence was "newly discovered" for purposes of Rule 60(b). Eddins could have relied in his initial complaint upon his 2013 journal entries, which existed long before the entry of judgment in his case. Similarly, while his case was still pending, Eddins was aware of his eye examinations, the progress note, and his glucose tests—the most recent of which was completed in March 2015. As the district court explained, even if Eddins could not access the documentation of his most recent medical records prior to the entry of judgment, he was aware of the exams and appointments and thus could have described them in his allegations.

Because the evidence Eddins presented could have been raised prior to the district court's entry of judgment, the district court correctly concluded that Eddins failed to satisfy the requirements for a motion for relief from judgment based on newly discovered evidence. We therefore affirm the district court's denial of his Rule 60(b) motion.

AFFIRMED.