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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Nathan Coronado,

Plaintiff,

vs.

Officer Chavez,

Defendant.

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No. CV-07-1757-PHX-PGR

ORDER

Pending before the Court is the plaintiff's Motion for Reconsideration of Dismissal Without Prejudice of Complaint (doc. #13), which the Court liberally construes as a motion to vacate the judgment pursuant to some aspect of Fed.R.Civ.P. 60(b)(1). Having considered the motion in light of the record, the Court finds that it should be denied.

The Court entered an order (doc. #9) and a judgment (doc. #10) dismissing this action without prejudice pursuant to Fed.R.Civ.P. 41(b) on May 13, 2008. The basis of the dismissal was the plaintiff's failure to prosecute this action due to his failure to timely return the service of process packet and his failure to respond in any manner to the Court's order requiring him to show cause why this action should not be dismissed for his failure to return the service packet. While the

1 plaintiff concedes in his motion for reconsideration that the dismissal was
2 appropriate, he argues that the dismissal should be vacated because the Court
3 was not aware at the time of dismissal of the circumstances regarding his attempt
4 to comply with the Court's order regarding service.

5 The following facts are relevant to the Court's conclusion that no
6 reconsideration of the dismissal is now appropriate. The Court entered its initial
7 screening order (doc. #3) on November 19, 2007, wherein it ordered the plaintiff
8 to file an amended complaint, and informed him that he was required to file a
9 notice of any change in his address and that his failure to do so could result in the
10 dismissal of the action. The plaintiff clearly received this order as he filed an
11 amended complaint on December 26, 2007. The Court entered its screening
12 order (doc. #6) regarding the amended complaint on February 26, 2008; the copy
13 of the order mailed to the plaintiff was accompanied by a service of process
14 packet. This second screening order again advised the plaintiff that he had to file
15 a notice for every change of address and again warned him that his failure to do
16 so could lead to the dismissal of this action, and it advised the plaintiff that he had
17 to return the completed service packet to the Court within 20 days and advised
18 him of the time limits for completion of service, and warned him that no service of
19 process could be made if the completed packet was not returned and that the
20 action may be dismissed if no timely service was made. The plaintiff, who was
21 then incarcerated in the Maricopa County Jail, clearly received the second
22 screening order as he states in his motion that he completed the service packet
23 and submitted it to the jail's Inmate Legal Services office on March 12, 2008 for
24 mailing to the Court.

25 The plaintiff was transferred from the Maricopa County Jail to the Arizona
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1 Department of Corrections on or about March 14, 2008. Having not received the
2 completed service packet from the plaintiff, the Court entered an Order to Show
3 Cause order (doc. #7) on April 8, 2008, wherein it required the plaintiff to show
4 cause by April 29, 2008 why this action should not be dismissed due to his failure
5 to return the service packet. The copy of the OSC order that the Court mailed to
6 the plaintiff at his address of record at the Maricopa County Jail was returned as
7 undeliverable with the notation that the plaintiff was no longer in custody there.
8 The plaintiff states in his motion that approximately one month after he was
9 transferred to the ADOC he received a letter, dated May 7, 2008, from the county
10 jail's ILS office stating that they were returning to him the service packet that he
11 had submitted for mailing because ILS could no longer help him as he was no
12 longer in county custody. The plaintiff's copy of the order and judgment of
13 dismissal, which the Court mailed to the plaintiff on May 13, 2008 at his address
14 of record at the county jail, was returned as undeliverable with the notation that
15 the plaintiff was no longer in custody.

16 The Court received the completed service packet from the plaintiff on May
17 23, 2008. The Clerk of the Court, inadvertently since the judgment of dismissal
18 had already been entered, returned the service packet to the plaintiff at his ADOC
19 address for correction, along with a change of address form. The plaintiff never
20 submitted a corrected service packet to the Court.

21 The plaintiff filed his pending motion for reconsideration, as well as a notice
22 of change of address, on March 6, 2009. The changed address submitted by the
23 plaintiff was the same address that the Clerk of the Court used in returning the
24 service packet to the plaintiff on May 23, 2008.

25 The Court concludes that it need not decide whether the circumstances
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1 merit relief under some portion of Rule 60(b)(1) because the plaintiff's motion is
2 untimely.¹ Pursuant to Fed.R.Civ.P. 60(c)(1), a motion filed pursuant to Rule
3 60(b)(1) must be filed within "a reasonable time," which is defined as "no more
4 than a year after the entry of the judgment or order[.]" Although the plaintiff filed
5 his pending motion less than one year after judgment was entered, that is not
6 dispositive for purposes of Rule 60(c)(1) as the one-year deadline is merely an
7 outside limitation. See Meadows v. Dominican Republic, 817 F.2d 517, 520-21
8 (9th Cir.1987) (Court may deny a Rule 60(b)(1) motion even if filed within the one-
9 year period if the moving party is guilty of laches or unreasonable delay.) In
10 determining what constitutes a "reasonable time" for purposes of Rule 60(c)(1),
11 the Court must take into consideration the following factors: "the interest of
12 finality, the reason for the delay, the practical ability of the litigant to learn earlier
13 of the grounds relied upon, and prejudice to other parties." Ashford v. Steuart,
14 657 F.2d 1053, 1055 (9th Cir. 1981).

15 Weighing these factors using the totality of the circumstances, the Court
16 concludes that the first three factors strongly favor the denial of the plaintiff's
17 motion, while the fourth factor is neutral. First, since the plaintiff filed his pending
18 motion long after the time for appealing the judgment had passed, the Court must
19 give "great weight" to the interest in finality. *Id.* Second, none of the reasons
20 given by the plaintiff legitimize the almost 10 month delay between the entry of
21 judgment and the filing of the pending motion. While the plaintiff states that he
22 diligently attempted to determine how to proceed once he learned of the
23 dismissal of this action, which at the latest was in late May, 2008, he fails to


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26 The motion would be untimely even if the Court construed it as being
filed pursuant to Fed.R.Civ.P. 60(b)(6).

1 explain, for example, what prevented him from simply contacting the Court to
2 request additional time once he discovered in early May, 2008 that the county jail
3 ILS office had not mailed his service packet to the Court, what prevented him
4 from filing a notice of appeal, what prevented him from following the Clerk of the
5 Court's direction to return the corrected service packet to the Court in late May,
6 2008, etc. Third, the plaintiff's failure to learn in early, 2008 that the service
7 packet had not been received by the Court, and his failure to rectify the matter
8 short of dismissal, was entirely his own fault as it was caused by his failure to
9 comply the Court's two earlier orders requiring him to provide the Court with a
10 notice of his change in address. Therefore,

11 IT IS ORDERED that the plaintiff's Motion for Reconsideration of Dismissal
12 Without Prejudice of Complaint (doc. #13) is denied.

13 DATED this 10th day of March, 2010.

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17 Paul G. Rosenblatt
United States District Judge