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NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Abubakar Hussein Ahmed,
Plaintiff,
v.
Arizona Department of Public Safety, et al.,
Defendants.

No. CV-16-00935-PHX-JJT

ORDER

At issue is *pro se* Plaintiff Abubakar Hussein Ahmed’s Motion to Vacate Judgment (Doc. 9).

I. BACKGROUND

Plaintiff filed his Complaint (Doc. 1) and Application for Leave to Proceed *In Forma Pauperis* (Doc. 2) on April 4, 2016. Plaintiff also filed a Motion to Allow Electronic Filing. (Doc. 3.) On April 26, 2016, the Court denied Plaintiff’s *In Forma Pauperis* Application after determining he had the ability to pay the Court’s fees. (Doc. 7.) The Court ordered that Plaintiff pay the requisite fees within 30 days of entry of that Order. (Doc. 7.) Plaintiff failed to comply and the case was terminated on June 3, 2016. (Doc. 8.) Plaintiff now seeks to vacate that Order (Doc. 8), as well as the Court’s Order denying Plaintiff’s *In Forma Pauperis* Application (Doc. 7), and to obtain a ruling on his Electronic Filing Motion (Doc. 3).

1 **II. ANALYSIS**

2 While Plaintiff cites several rules under which his motion is brought, Plaintiff
3 chiefly seeks relief under Federal Rule of Civil Procedure Rule 60. *See* Fed. R. Civ. P.
4 60. Under Rule 60, the court may relieve a party from a final judgment, order, or
5 proceeding for specific, enumerated reasons. *Id.* However, a “motion under Rule 60(b)
6 must be made within a reasonable time . . . and . . . no more than a year after the entry of
7 the judgment” Fed. R. Civ. P. 60(c)(1). “What constitutes a ‘reasonable time’
8 depends upon the facts of each case, taking into consideration the interest in finality, the
9 reason for delay, the practical ability of the litigant to learn earlier of the grounds relied
10 upon, prejudice to other parties.” *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981).
11 Although Plaintiff’s Motion was brought in under a year—356 days from this Court’s
12 Order and 318 from the Clerk’s termination of the action—it was not filed within a
13 reasonable time. Plaintiff provides no adequate justification for the nearly year-long delay
14 in seeking relief under any standard. While Plaintiff is *pro se*, and his pleadings construed
15 broadly, “mistakes construing the rules do not usually constitute ‘excusable’ neglect.”
16 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 392 (1993). This
17 Circuit has made clear that “[*p*]ro se litigants must follow the same rules of procedure
18 that govern other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986); *see also*
19 *Jacobsen v. Filler*, 790 F.2d 1362, 1364-65 (9th Cir. 1986) (*pro se* litigants should not be
20 treated more favorably than parties represented by attorneys); *United States v. Flewitt*,
21 874 F.2d 669, 675 (9th Cir. 1989) (*pro se* litigants are subject to the same good faith
22 limitations imposed on lawyers).

23 Even were Plaintiff’s Motion brought in a timely manner, under Rule 60(b), a
24 court may relieve a party from a final judgment or order only for the following reasons:
25 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence;
26 (3) fraud, misrepresentation, or misconduct by an opposing party; the judgment is void;
27 (5) the judgment has been satisfied, released or discharged; or (6) any other reason that
28 justifies relief. *See Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991). Plaintiff

1 fails to assert the presence of any of the enumerated reasons justifying relief under
2 Rule 60, or any other reason. Instead, Plaintiff only contends that the Court abused its
3 discretion in denying his *In Forma Pauperis* Application without discussing his income,
4 assets, expenses, and debts. (Mot. at 2.) Such an allegation, even if true, is not proper
5 grounds for relief under Rule 60.

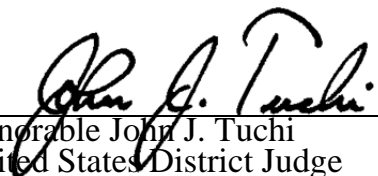
6 **III. CONCLUSION**

7 The only ground upon which relief might plausibly be granted in Plaintiff's favor
8 under Rule 60(b) is for excusable neglect in not complying with the Court's directive to
9 pay fees. *See Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009). The Court
10 cannot conclude that Plaintiff has established excusable neglect given the Court's
11 targeted and clear Order instructing him when and what to file—which Plaintiff does not
12 dispute. Plaintiff's Motion provides no justification for his failure to comply with the
13 Order, his delay in filing the current Motion, or his failure to file any timely motion for
14 reconsideration. The Court concludes, therefore, that relief must not be granted under
15 Rule 60(b). *Allmerica Fin. Life Ins. & Annuity Co. v. Llewellyn*, 139 F.3d 664, 666 (9th
16 Cir. 1997) (stating that party must show "extraordinary circumstances" to obtain relief
17 under Rule 60(b)(6)).

18 **IT IS THEREFORE ORDERED** denying *pro se* Plaintiff Abubakar Hussein
19 Ahmed's Motion to Vacate Judgment (Doc. 9).

20 **IT IS FURTHER ORDERED** denying Plaintiff's request for a ruling on his
21 Motion to Allow Electronic Filing (Doc. 3) as moot. This action shall remain closed.

22 Dated this 24th day of April, 2017.

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24 
25 Honorable John J. Tuchi
26 United States District Judge
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