

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

WILLIAM D. DUNNE,

Petitioner,

v.

D. SMITH, WARDEN, B. AVALOS,
ASSOCIATE WARDEN, and J.
KARGE, CAPTAIN,

Defendants.

Case No. 1:07-CV-0074-BLW

ORDER

Before the Court in this *Bivens* action is Plaintiff's Motion for Reconsideration, brought under Rule 59(e) of the Federal Rules of Civil Procedure. (Dkt. 59.) Plaintiff has since also filed a Notice of Appeal. (Dkt. 61.)

Plaintiff's Motion is untimely and will be dismissed. A motion to alter or amend judgment under Rule 59(e) must be filed within 28 days after the entry of judgment. Fed. R. Civil P. 59(e). Here, judgment was entered on March 31, 2011, Plaintiff's Motion for Reconsideration was dated on May 7 and filed on May 18, both over 28 days later. (Dkts. 57, 59.)

Plaintiff has requested an extension of time such that his Motion would be deemed timely. (Dkt. 58.) While he claims that the institution where he is incarcerated was locked

ORDER - 1

down beginning on April 26, 2011, he acknowledges that he received the Court's Memorandum Decision and Order nearly three weeks earlier, on April 7, well within the time to file a timely motion for reconsideration. (Dkt. 58, p. 2.) The Court therefore finds his request to be lacking in good cause and, in any event, the Court does not have the authority to extend the time in which to file a Rule 59(e) motion. *See* Fed. R. Civil P. 6(b)(2) ("a court must not extend the time to act under ... Rule 59(e)"); *see also Harman v. Harper*, 7 F.3d 1455, 1458 (9th Cir. 1993).

Even if the Motion were timely, however, the Court finds that Plaintiff has asserted no clear errors of law or fact, or extraordinary circumstances, that would warrant reconsideration of its decision in this case. *See, e.g., School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

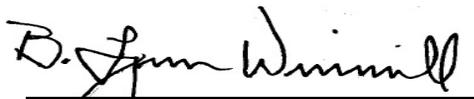
ORDER

IT IS ORDERED:

1. Plaintiff's Motion for Extension of Time (Dkt. 58) is DENIED.
2. Plaintiff's Motion for Reconsideration (Dkt. 59) is DISMISSED.



DATED: **November 8, 2011**



Honorable B. Lynn Winmill
Chief U. S. District Judge