

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PAUL ANTOINE,

Plaintiff,

v.

CRAIG PELZ,

Defendant.

CASE NO. 1:07-cv-01450 LJO DLB PC

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

(Doc. 26)

Plaintiff Paul Antoine (“Plaintiff”) is a former state prisoner who was proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to a court order, Plaintiff was required to file his amended complaint by July 21, 2008. (Doc. 15.) Plaintiff failed to do so and on September 16, 2008, this action was dismissed for Plaintiff’s failure to obey a court order and failure to state a claim. (Doc. 21.) On October 20, 2008, Plaintiff filed a motion requesting that he be permitted to file his amended complaint late. (Doc. 24.) By order filed July 7, 2009, Plaintiff’s motion was denied without prejudice. (Doc. 25.)

On August 5, 2009, Plaintiff filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b). Plaintiff states that he was unable to file an amended complaint by the July 21, 2008 deadline because prison officials had confiscated his entire box of legal documents. Plaintiff attaches as an exhibit a grievance form where he indicates that he was paroled without his property, and was told to send a money order to have his property mailed to an address.

Pursuant to Federal Rule of Civil Procedure 60(b), the Court may relieve a party from final

1 judgment for the specific reasons enumerated in the Rule or for any other reason that justifies relief.
2 Relief under this latter provision requires the moving party to “demonstrate both injury and
3 circumstances beyond his control that prevented him from proceeding with the action in a proper
4 fashion.” Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations and citation
5 omitted). The “Rule is to be used sparingly as an equitable remedy to prevent manifest injustice and
6 is to be utilized only where extraordinary circumstances prevented a party from taking timely action
7 to prevent or correct an erroneous judgment.” Id. (internal quotations and citation omitted).

8 The court does not find extraordinary circumstances justifying relief from judgment, and the
9 motion is THEREFORE DENIED.

10 IT IS SO ORDERED.

11 **Dated:** September 22, 2009

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE