IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW FORREY HOLGERSON, No. CIV S-06-0144-GEB-CMK-P

12 Plaintiff,

13 vs. <u>ORDER</u>

14 MIKE KNOWLES, et al.,

Defendants.

Plaintiff, a prisoner proceeding pro se, brought this civil rights action pursuant to 42 U.S.C. § 1983. Final judgment dismissing the action was entered on December 12, 2006. Plaintiff did not appeal. Pending before the court in this closed matter is plaintiff's motion for "reactivation" of the case, which the court construes as a motion for reconsideration under Federal Rule of Civil Procedure 60 (Doc. 23).

The court may grant reconsideration of a final judgment under Federal Rules of Civil Procedure 59(e) and 60. Under Rule 60(a), the court may grant reconsideration of final judgments and any order based on clerical mistakes. Relief under this rule can be granted on the court's own motion and at any time. See Fed. R. Civ. P. 60(a). However, once an appeal has been filed and docketed, leave of the appellate court is required to correct clerical mistakes while

the appeal is pending. See id.

Under Rule 60(b), the court may grant reconsideration of a final judgment and any order based on, among other things: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence, could not have been discovered within ten days of entry of judgment; and (3) fraud, misrepresentation, or misconduct of an opposing party. A motion for reconsideration on any of these grounds must be brought within a reasonable time and no later than one year of entry of judgment or the order being challenged.

See Fed. R. Civ. P. 60(c)(1).

Here, plaintiff's Rule 60 motion is untimely. Final judgment was entered on December 12, 2006, and the current motion was filed more than one year after that date.

Accordingly, IT IS HEREBY ORDERED that plaintiff's Rule 60 motion (Doc. 23) is denied as untimely.

Dated: February 22, 2011

ARLAND E. BURRELL, 'JR. Juited States District Judge