

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
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH NICHOLS,
Plaintiff,
v.
ELOY MEDINA, et al.,
Defendants.

Case No. [13-cv-05773-JD](#)

**ORDER DENYING MOTION FOR
RELIEF FROM A JUDGMENT**

Re: Dkt. No. 41

This is a civil rights case filed pro se by a state prisoner that was dismissed and closed. Plaintiff has filed a motion for relief from a judgment pursuant to Fed. R. Civ. P. 60(b).

Rule 60(b) lists six grounds for relief from a judgment. Such a motion must be made within a “reasonable time,” and as to grounds for relief (1) - (3), no later than one year after the judgment was entered. *See* Fed. R. Civ. P. 60(b). A Rule 60(b) motion does not affect the finality of a judgment or suspend its operation, *see id.*; therefore, a party is not relieved of its obligation to comply with the court’s orders simply by filing a Rule 60(b) motion. *See Hook v. Arizona Dep’t of Corrections*, 107 F.3d 1397, 1404 (9th Cir. 1997).

Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *School Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Rule 60(b) provides a mechanism for parties to seek relief from a judgment when “it is no longer equitable that the judgment should have prospective application,” or when there is any other reason justifying relief from judgment. *Jeff D. v. Kempthorne*, 365 F.3d 844, 853-54 (9th Cir. 2004) (quoting Fed. R. Civ. P. 60(b)).

After receiving four months of extensions, plaintiff eventually filed a first amended complaint that the Court reviewed and dismissed for failure to state a claim and because many of

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

the allegations were time barred by the four year state statute of limitations. See Docket No. 39. In his motion for relief from a judgment, plaintiff alleges that the amended complaint received by the Court was not sent by him. Plaintiff states that he has only now submitted an amended complaint, seven months after the original complaint was dismissed with leave to amend. Plaintiff seeks the case to be reopened and this new complaint to be reviewed.

The amended complaint reviewed and dismissed by the Court contained a signature from plaintiff that is substantially similar to the signature on the instant motion. Regardless of what may have transpired, the Court has reviewed plaintiff's latest complaint and will deny this motion. Plaintiff alleges that he slipped and fell on June 27, 2008, and defendants were deliberately indifferent to his safety. These allegations would be time barred for the same reasons as stated by the Court in the previous order of dismissal. Plaintiff has failed to demonstrate that he is entitled to relief pursuant to Rule 60(b), and his latest claims are untimely.

CONCLUSION

Plaintiff's motion for relief from a final judgment (Docket Nos. 41) is **DENIED**.
IT IS SO ORDERED.

Dated: November 20, 2014



JAMES DONATO
United States District Judge

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
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH NICHOLS,
Plaintiff,
v.
ELOY MEDINA, et al.,
Defendants.

Case No. [13-cv-05773-JD](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 11/20/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Joseph Nichols ID: H-87217
Calif. State Prison--L.A. County
P.O. Box 8457
Lancaster, CA 93539-8457

Dated: 11/20/2014

Richard W. Wieking
Clerk, United States District Court

By: *Lisa R. Clark*
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO