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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARCUS D. BRICENO
CDCR #AU0333,

Plaintiff,

v.

BLAKE WILLIAMS,

Defendant.

Case No.: 3:16-cv-1665 JAH (AGS)

**ORDER DENYING MOTION FOR
RECONSIDERATION**
[Doc. No. 97]

Currently before the Court is Defendant Blake Williams’ (“Williams”) Motion for Reconsideration re Order on Motion for Summary Judgment. (Doc. No. 97.)

I. Procedural History

On February 20, 2020, Williams filed a Motion for Summary Judgment on qualified immunity grounds as to Plaintiff’s Fourth Amendment Excessive Force claims. (See Doc. No. 77.) The Court GRANTED in Part, and DENIED in part, Williams’ Motion for Summary Judgment. (See Doc. No. 96.) Specifically, the Court found that there were “genuine disputes of material fact exist as to whether Williams violated Plaintiff’s Fourth Amendment rights” which is the first prong of the qualified immunity analysis. (Id. at 17.) The Court GRANTED Williams’ qualified immunity with regard

1 to the “take down” of Plaintiff but DENIED Williams’ qualified immunity for the “punch
2 or punches to [Plaintiff’s] head after he was taken to the ground.” (*Id.* at 21.)

3 Williams moves for reconsideration pursuant to Federal Rule of Civil Procedure
4 59(e). (*See* Doc. No. 97). Specifically, Williams “requests reconsideration of the order
5 at the point where the Court denied qualified immunity for the alleged punch(es) based
6 on the find that the right was clearly established by *Blankenhorn v. City of Orange*, 485
7 F.3d 463, 478-79 (9th Cir. 2007).” (*Id.* at 1.) Williams argues that the Court
8 impermissibly cited to this case because it was “not argued by Plaintiff in his
9 oppositions” and the Court “misinterpret[ed] or expand[ed] the holding of *Blankenhorn*.”
10 (Doc. No. 97-1 at 2.)

11 **I. Williams’ Motion**

12 **A. Standard of Review**

13 While Williams purports to bring this Motion pursuant to Rule 59(e), this section
14 relates to judgments and no judgment has yet to be entered in this matter. However, a
15 motion requesting reconsideration of a matter previously decided may be construed as a
16 motion to alter an order pursuant to Rule 60(b). *See Osterneck v. Ernst & Whinney*, 489
17 U.S. 169, 174 (1989); *In re Arrowhead Estates Development Co.*, 42 F.3d 1306, 1311
18 (9th Cir. 1994).

19 Rule 60(b) provides for reconsideration where one or more of the following is
20 shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered
21 evidence which by due diligence could not have been discovered before the court's
22 decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has
23 been satisfied; (6) any other reason justifying relief. FED. R. CIV. P. 60(b); *School Dist. 1J*
24 *v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

25 “Although the application of Rule 60(b) is committed to the discretion of the
26 district courts . . . , as a general matter, Rule 60(b) is remedial in nature and must be
27 liberally applied.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 695-96 (9th Cir.
28 2001) (internal quotation marks and ellipsis omitted). Nevertheless, Rule 60(b) provides

1 for extraordinary relief and may be invoked only upon a showing of “exceptional
2 circumstances.” *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1044 (9th Cir. 1994).

3 **B. Williams’ arguments**

4 1. *Blankenhorn* citation

5 Williams argues it was error for the Court to rely on the *Blankenhorn* decision
6 when the Court found that the holding in *Blankenhorn* clearly established to a reasonable
7 officer that striking Plaintiff multiple times in the head while he was being handcuffed
8 and posed no immediate threat to officers or the public, would violate Plaintiff’s Fourth
9 Amendment right. (Doc. No. 97-1 at 3.) Specifically, Williams claims this was in error
10 because “Plaintiff did not discuss or interpret the *Blankenhorn* in either of his two
11 oppositions to the motion for summary judgment.” (*Id.*)

12 The Ninth Circuit has emphasized that “an ordinary *pro se* litigant, like other
13 litigants, must comply strictly with the summary judgment rules” but [*p*]ro *se* inmates are
14 however, expressly exempted from this rule.” *Thomas v. Ponder*, 611 F.3d 1144, 1150
15 (9th Cir. 2010). “We have, therefore, held consistently that courts should construe
16 liberally motion papers and pleadings filed by *pro se* inmates and should avoid applying
17 summary judgment rules strictly.” *Id.*

18 “Qualified immunity gives government officials breathing room to make
19 reasonable but mistaken judgments,” and “protects ‘all but the plainly incompetent or
20 those who knowingly violate the law.’” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)
21 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). “We do not require a case directly
22 on point” before concluding that the law is clearly established, “but existing precedent
23 must have placed the statutory or constitutional question beyond debate.” *al-Kidd*, 563
24 U.S. at 741.

25 The Court rejects Williams’ argument, because if applied, would require this Court
26 to ignore relevant case law on the ground that a *pro se* inmate litigant, with obviously
27 limited access to law libraries, did not cite to a specific case in their opposition. *See e.g.*,
28 *Soto v. Sweetman*, 882 F.3d 865, 872 (9th Cir. 2018) *cert denied*, 139 S.Ct. 488 (2018).

1 2. *Application of Blankenhorn*

2 Next, Williams argues that *Blankenhorn* decision is not applicable to the facts in
3 this matter because in *Blankenhorn* there was a disputed issue of material fact as to
4 whether the plaintiff had his arms “beneath his body” necessitating the use of force, by
5 punching the plaintiff in the head in order to place him in handcuffs. (Doc. No. 97-1 at 4
6 citing *Blankenhorn*, 485 F.3d at 480). Williams argues *Blankenhorn* is inapplicable
7 because in this matter “it is undisputed here that Plaintiff actively kept his arms
8 underneath him after he fell to the ground” and thus, Williams was “reasonably justified”
9 in using force by striking Plaintiff in the head to gain compliance. (Doc. No. 97-1 at 4
10 citing Pl.’s Depo, Doc. No. 77-16 at 81:9-11.)

11 Attached to Plaintiff’s first Opposition is Williams’ testimony at his preliminary
12 hearing. (Doc. No. 91 at 27-106.) Williams testifies that Plaintiff initially had his hands
13 underneath him when he slammed him to the ground, but Williams also testifies that
14 when he struck Plaintiff in the head it was when Plaintiff was “pushing up” and
15 Plaintiff’s hands were no longer underneath him. (*Id.* at 71-72.) In addition, Plaintiff’s
16 deposition testimony, disputed Williams’ assertion, and it is far from clear that his hands
17 were underneath him when Williams allegedly punched him in the head. In Williams’
18 Motion, he sets forth Plaintiff’s testimony as follows:

19 Q: And you said your hands were underneath you?

20 A: Yeah. [...]

21 (97-1 at 4 citing Doc. No. 77-16, Ex. 14 at 81:9-11).

22 However, the exchange more broadly is as follows:

23 Q: Did you – describe for me how you landed. Did you land on your stomach?

24 A: I landed on my stomach.

25 Q: And you said that your hands were underneath you?

26 A. Yeah. I tried to protect my hand from slamming on the floor, so I just - - it
27 was a quick slam on the floor. So I just went like face-first to the floor. But I tried to
28 protect my hands at the same time.

1 Q: Did Officer Williams say anything to you?

2 A: No. He just started punching me.

3 (*Id.* at 81:6-16.)

4 It is not clear from this testimony that Plaintiff's hands were underneath him while
5 Williams was purportedly punching him in the head and Williams' previous testimony in
6 Plaintiff's preliminary injunction suggests that his hands may not have been underneath
7 Plaintiff when Williams punched Plaintiff in the head. Like the facts in *Blankenhorn*,
8 there are disputed facts as to whether Plaintiff had actually "pinned his arms beneath his
9 body" or "maneuver[ed] his arms beneath his body" before Williams punched Plaintiff in
10 the head to gain compliance. *Blankenhorn*, 485 F.3d at 480. In fact, there is a disputed
11 issue of material fact as to whether Williams told Plaintiff to free his hands before he hit
12 Plaintiff in the head and Williams also seems to suggest in his prior testimony that
13 Plaintiff's hands were not pinned underneath him, but Plaintiff was in fact pushing
14 himself up after landing on his stomach after being slammed to the ground by Williams.

15 As the Ninth Circuit found in *Blankenhorn*, we must credit Plaintiff's version of
16 events at the summary judgment stage and conclude that a "rational jury could find that if
17 [Plaintiff] did not maneuver his arms beneath his body it eliminated the need for any use
18 of force to release them, and thus that [Williams'] punches were not reasonably justified
19 by the circumstances as he claims." *Id.*

20 Because Williams has provided no basis for the Court to vacate or set aside its
21 October 15, 2020 Order, relief under Rule 60 is not warranted. *See School Dist. No. 1J*, 5
22 F.3d at 1442; *Engleson*, 972 F.2d at 1044. Ultimately, a party seeking reconsideration
23 must show "more than a disagreement with the Court's decision, and recapitulation of the
24 cases and arguments considered by the court before rendering its original decision fails to
25 carry the moving party's burden." *United States v. Westlands Water Dist.*, 134 F. Supp.
26 2d 1111, 1131 (E.D. Cal. 2001).

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1 **III. Conclusion and Order**

2 For these reasons, IT IS ORDERED that:

3 Williams' Motion for Reconsideration (Doc. No. 97) is DENIED.

4 **IT IS SO ORDERED.**

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7 Dated: June 2, 2021

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10 Hon. John A. Houston
11 United States District Judge
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