

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-001128-ZLW

HECTOR MARTINEZ-JIMENEZ,

Plaintiff,

v.

PEOPLE OF STATE OF COLORADO,
C.O.D.O.C. STERLING PRISON FACILITY,
LT. E. COLE,
SGTO. JOHNSON,
C/O STRAHNEYER,
C/O FERNANDEZ,
C/O BERNHARDT,
C/O WALRAVEN,
C/O MARCUS RYNEK, and
MRS. MARTEENA RING,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 07 2008

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

Plaintiff Hector Martinez-Jimenez, on November 23, 2007, filed a document with the Court titled "Judgment Zita L. Weinshenk [sic]." In the document, Plaintiff appears to request that the Court reconsider the dismissal entered in the instant action on November 8, 2007. The Court must construe the document liberally because Mr. Martinez-Jimenez is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, Plaintiff's request will be construed as a Motion to Reconsider and will be denied.

A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may “file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b).” ***Van Skiver v. United States***, 952 F.2d 1241, 1243 (10th Cir. 1991). Plaintiff filed the Motion to Reconsider within ten days after Judgment was entered. Therefore, the Court will consider the Motion to Reconsider pursuant to Rule 59(e). ***See Van Skiver***, 952 F.2d at 1243.

The Court dismissed the Complaint and the instant action without prejudice because Plaintiff failed to comply with Magistrate Judge Boyd N. Boland’s October 17, 2007, Order. The reasons for the dismissal are discussed in detail in the November 8, 2007, Order of Dismissal. Upon consideration of the Motion to Reconsider and the entire file, the Court finds that Plaintiff fails to demonstrate some reason why the Court should reconsider and vacate the order to dismiss this action. The three major grounds that justify reconsideration are: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. ***See Shields v. Shetler***, 120 F.R.D. 123, 126 (D. Colo. 1988).

Although Mr. Martinez-Jimenez asserts that he needs assistance of counsel because he does not understand English, he has submitted previous filings with this Court without difficulty. In one of Plaintiff’s cases, ***Martinez-Jimenez v. Baca, et al.***, No. 02-cv-01076-PSF-MJW (D. Colo. Mar. 23, 2005), he, however, was assigned counsel. The case, nonetheless, was dismissed because Plaintiff failed to allege any evidence of physical injury that occurred as a result of Defendants’ actions. The Tenth Circuit upheld the dismissal. ***Martinez-Jimenez v. Baca***, No. 05-1181 (10th Cir. Feb. 7,

2006). Plaintiff then filed a subsequent prisoner complaint, **Martinez-Jimenez v. C.O.D.O.C. Fremont Prison Employers**, No. 07-cv-00287-ZLW (D. Colo. May 17, 2007), in which he raised the same issues that were decided in Case No. 02-cv-01076-PSF-MJW. This Court dismissed Case No. 07-cv-00287-ZLW as frivolous and malicious.

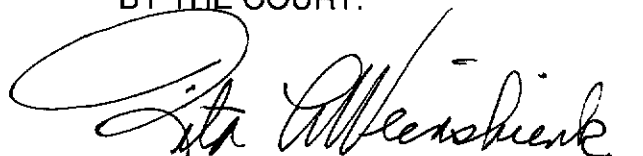
Plaintiff, in the instant action, refers to the same claims in at least one of the complaints he filed in the instant action on October 20, 2007, that he raised previously in Case No. 02-01076-PSF-MJW and again in Case No. 07-cv-00287-ZLW. Simply because Plaintiff has a limited understanding of English does not mean that Plaintiff repeatedly may present the same claims to the Court. Furthermore, Plaintiff has demonstrated in previous cases that he is capable of submitting short, concise, and understandable claims to this Court on one prisoner complaint form. Therefore, the Motion to Reconsider will be denied. Accordingly, it is

ORDERED that the Motion to Reconsider that Plaintiff filed on November 23, 2007, and which the Court has treated as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), is denied. It is

FURTHER ORDERED that further attempts by Plaintiff to file either complaints or claims in the instant action are inappropriate and will be stricken by the Court.

DATED at Denver, Colorado, this 7 day of February, 2008.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

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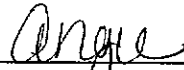
CERTIFICATE OF MAILING

Civil Action No. 07-cv-01128-BNB

Hector Hugo Martinez Jimenez
Prisoner No. 106871
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 2/7/08

GREGORY C. LANGHAM, CLERK

By: 
Deputy Clerk