

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01350-ZLW

GENE ALLEN,

Applicant,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

AUG 07 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DENYING MOTION FOR RECONSIDERATION

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This matter is before the Court on the *pro se* pleading titled "Motion for Reconsideration Fed. Rules Civ. Proc. Rule 60(b) Fed. R. App. P. 10(b)., Cir. R. 4-1, 28 U.S.C. § 636," that Applicant Gene Allen filed with the Court on August 3, 2009. Mr. Allen is in the custody of the Nevada Department of Corrections and currently is incarcerated at the Northern Nevada Correctional Center in Carson City, Nevada. Although the Motion for Reconsideration is unintelligible, the Court will construe the Motion liberally because Mr. Allen is proceeding *pro se*. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). Nonetheless, for the reasons stated below, the Motion for Reconsideration will be denied.

The Court denied the Application and dismissed the instant action for failure to cure the deficiencies noted in Magistrate Judge Boyd N. Boland's June 10, 2009,

Order. The reasons for the dismissal are explained in detail in the July 23, 2009, Order of Dismissal.

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 (10<sup>th</sup> Cir. 1991). A postjudgment motion filed within ten days of a final judgment should be construed as a Rule 59(e) motion. *Id.*; ***see also Dalton v. First Interstate Bank***, 863 F.2d 702, 703 (10<sup>th</sup> Cir. 1988). A motion for reconsideration filed more than ten days after the final judgment in an action should be considered pursuant to Rule 60(b). ***Van Skiver***, 952 F.2d at 1243.

Final decisions are those that end the litigation on the merits and leave nothing for the district court to do except execute the judgment. ***Van Cauwenberghe v. Biard***, 486 U.S. 517, 521-22 (1988); ***In re Durability, Inc.***, 893 F.2d 264, 265 (10<sup>th</sup> Cir. 1990). “It is well settled that an order dismissing the action . . . is a final judgment.” ***Sherr v. Sierra Trading Corp.***, 492 F.2d 971, 978 (10<sup>th</sup> Cir. 1974). The July 23, 2008, Order denied the Application and dismissed the action. The instant Motion for Reconsideration was filed on August 3, 2009. Applicant filed the Motion within ten days of the final judgment in the instant action. The Motion, therefore, properly is filed as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e).

A motion to alter or amend that reiterates issues originally raised in the application and that seeks to challenge the legal correctness of the court’s judgment by


arguing that the district court misapplied the law or misunderstood the litigant's position correctly is asserted pursuant to Fed. R. Civ. P. 59(e). **See *Van Skiver***, 952 F.2d at 1244. Upon consideration of the Motion and the entire file, the Court concludes that Mr. Allen fails to demonstrate some reason why the Court should alter or amend the July 23, 2009, Order of Dismissal in this action. Therefore, the Motion will be denied.

The Court notes that although Mr. Allen also refers to Fed. R. App. P. 10(b), to "Cir. R. 4-1," and to 28 U.S.C. § 636 in the caption of his Motion for Reconsideration, nothing in the text of the Motion for Reconsideration addresses the federal rules or statute that Mr. Allen has cited. Furthermore, the attachments Mr. Allen has submitted with the Motion for Reconsideration appear to pertain to a filing he submitted to the United States District Court for the District of Nevada. The Court, therefore, finds no basis to address Mr. Allen's reference to the rules or statute. Accordingly, it is

ORDERED that the Motion for Reconsideration (Doc. # 15), filed August 3, 2009, is construed as filed pursuant to Fed. R. Civ. P. 59(e) and is denied.

DATED at Denver, Colorado, this 7 day of Aug., 2009.

BY THE COURT:

  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-01350-BNB

Gene Allen  
Prisoner No. 76542  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 8/7/09

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_

Deputy Clerk