

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01380-ZLW

DARRELL L. HAVENS,

Plaintiff,

v.

ARVADA POLICE DET. WILLIAM JOHNSON,  
ARVADA POLICE DEPARTMENT, and  
CITY OF ARVADA,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

SEP 15 2009

GREGORY C. LANGHAM  
CLERK

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ORDER GRANTING MOTION TO RECONSIDER AND REINSTATING CASE

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Plaintiff, Darrell L. Havens, filed *pro se* on August 25, 2009, a motion titled "Motion to Reconsider Dismissal and Reinstate Case" asking the Court to reconsider and vacate the Order of Dismissal and the Judgment filed in this action on August 6, 2009. The Court must construe the motion for reconsideration liberally because Mr. Havens is proceeding *pro se*. 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, the motion to reconsider will be granted.

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). A motion to reconsider filed more than ten days after the final

judgment in an action should be considered pursuant to Rule 60(b). *See id.* at 1243. Mr. Havens' motion to reconsider in this action, which was filed more than ten days after the Order of Dismissal and the Judgment, will be considered pursuant to Fed. R. Civ. P. 60(b). Relief under Rule 60(b) is appropriate only in extraordinary circumstances. *See Massengale v. Oklahoma Bd. of Examiners in Optometry*, 30 F.3d 1325, 1330 (10th Cir. 1994).

The Court dismissed this action without prejudice for Mr. Havens' failure, within the time allowed, to file an amended complaint that complied with the June 25, 2009, order for an amended complaint. In the August 25, 2009, motion to reconsider, Mr. Havens asserts that he did not receive the June 25 order because the mail room at the Fort Lyons Correctional Facility, where he is incarcerated, erroneously returned the order to the Court without his knowledge. Mr. Havens alleges that he has been incarcerated at the Fort Lyons Correctional Facility for the duration of this lawsuit, and asks that the instant action be reinstated so that he may comply with the directives of the June 25 order.

Upon consideration of the motion to reconsider and the entire file, the Court finds that Mr. Havens has demonstrated the existence of extraordinary circumstances that justify a decision to reconsider and vacate the order dismissing this action. Therefore, the motion to reconsider will be granted. Accordingly, it is

ORDERED that the motion titled "Motion to Reconsider Dismissal and Reinstate Case" asking the Court to reconsider and vacate the Order of Dismissal and the Judgment filed in this action on August 6, 2009, that Plaintiff, Darrell L. Havens, filed

**pro se** on August 25, 2009, and which the Court has construed liberally as a Fed. R. Civ. P. 60(b) motion, is granted. It is

FURTHER ORDERED that the August 6, 2009, dismissal order and judgment are vacated. It is

FURTHER ORDERED that the clerk of the Court is directed to reinstate and return this action to the **pro se** docket. It is

FURTHER ORDERED that Mr. Havens will be allowed **thirty (30) days from the date of this order** in which to comply with the directives of the June 25, 2009, order for an amended complaint. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Havens, together with a copy of this order, a copy of the June 25 order for an amended complaint and two copies of the following form to be used in submitting the amended complaint:

Prisoner Complaint.


FURTHER ORDERED that the amended complaint shall be titled "Amended Prisoner Complaint," and shall be filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that, if Mr. Havens fails to file an amended complaint that complies with this order to the Court's satisfaction within the time allowed, the complaint and the action will be dismissed without further notice. It is

FURTHER ORDERED that process shall not issue until further order of the Court.

DATED at Denver, Colorado, this 14 day of Sept, 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-01380-ZLW

Darrell L. Havens  
Prisoner No. 143367  
Fort Lyons Corr. Facility  
PO Box 1000  
Fort Lyons, CO 81038

I hereby certify that I have mailed a copy of this **ORDER, the Order filed 6/25/09,**  
and **two copies of the Prisoner Complaint** to the above-named individuals on 9/15/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk