

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01524-ZLW

DAVID A. YORK, #95717,

Plaintiff,

v.

(NAME UNKNOWN) MAYOR, Mesa County, Grandjunction [sic],  
(NAME UNKNOWN), COMMISSIONER, Mesa County, Grandjunction [sic],  
(NAME UNKNOWN), CHIEF OF POLICE, Grandjunction [sic],  
STAN HILKEY, Sheriff, Mesa County,  
PETE HAUTZINGER, District Attorney, Mesa County,  
MARSHALL DIXON, TaskForce Officer, Mesa County, Grandjunction [sic],  
SHAWN HASTY, TaskForce Officer, Mesa County, Grandjunction [sic],  
BRIAN FRASIER, Police Officer, Grandjunction [sic],  
CODY KENNEDY, Police Officer, Grandjunction [sic], and  
BEN CARNES, Deputy Sheriff, Mesa County,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO  
OCT -2 2009  
GREGORY C. LANGHAM  
CLERK

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ORDER DENYING MOTION TO RECONSIDER

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This matter is before the Court on the motion titled "Motion for Relief From Order of Judgment and Dismissal" submitted *pro se* by Plaintiff, David A. York, and filed with the Court on September 17, 2009. Mr. York seeks reconsideration of the order of dismissal and the judgment entered and filed on August 17, 2009, dismissing his complaint and the instant action without prejudice. Mr. York is a prisoner in the custody of the Colorado Department of Corrections and is currently held at the Limon Correctional Facility in Limon, Colorado.

The Court must construe the September 17, 2009, motion liberally because Mr. York 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 liberally construed motion to reconsider 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). 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 (10th Cir. 1988). 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. York's motion to reconsider in this action, which was filed more than ten days after the dismissal order 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).

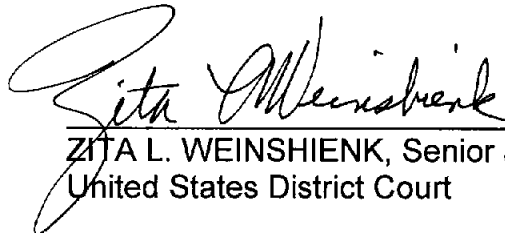
Upon consideration of the motion to reconsider and the entire file, the Court finds that Mr. York fails to demonstrate the existence of any extraordinary circumstances that would justify a decision to reconsider and vacate the order dismissing this action. The Court dismissed this action after determining that Mr. York's claims are barred by rule in *Heck v. Humphrey*, 512 U.S. 477 (1994). The essence of

Mr. York's argument in the motion to reconsider is the rule in *Heck* does not apply to his Fourth and Fifth Amendment claims. He is mistaken. *See, e.g., Crow v. Penry*, 102 F.3d 1086, 1087 (10th Cir. 1996) (dismissing pursuant to *Heck* Fourth and Fifth Amendment claims alleging that a probation officer and others conspired to have search and arrest warrants issued where the only relief sought was for damages resulting from the arrest and related incarceration). Therefore, the motion to reconsider will be denied. Accordingly, it is

ORDERED that the "Motion for Relief From Order of Judgment and Dismissal" filed on September 17, 2009, is denied.

DATED at Denver, Colorado, this 1st day of Oct-, 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-01524-ZLW

David A. York  
Prisoner No. 95717  
Limon Correctional Facility  
49030 State Hwy. 71  
Limon, CO 80826

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/12/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk