

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01549-ZLW

RICHARD MARTINEZ,

Plaintiff,

v.

EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF
CORRECTIONS, and
WARDEN OF THE STERLING CORRECTIONAL FACILITY,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 01 2009

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

Plaintiff Richard Martinez is a State of Colorado prisoner. On September 22, 2009, Mr. Martinez filed a Motion for Rehearing, in which he challenges the September 9, 2009, Order of Dismissal. The Court must construe the Motion liberally because Mr. Martinez 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, the Motion will be construed as filed pursuant to Fed. R. Civ. P. 59(e) 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). Mr. Martinez filed the Motion within ten days after the Judgment was entered on September 9, 2009, in the instant action. The Court, therefore, will construe the Motion for Rehearing as a Motion to Reconsider filed pursuant to Rule 59(e). **See *Van Skiver***, 952 F.2d at 1243.

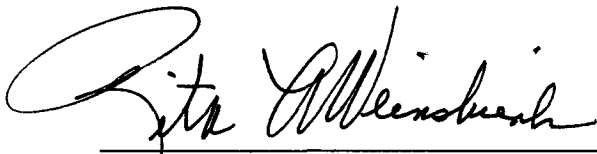
The Court dismissed the action because Mr. Martinez failed to comply with the July 20, 2009, Order directing him to file an Amended Complaint in keeping with ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10th Cir. 2007). The Court also found dismissal proper because, even though Mr. Martinez raised additional claims against both named Defendants in the Letter he filed with the Court on July 28, 2009, he failed to submit the additional claims on a Court-approved form in keeping with D.C.COLO.L.CivR 8.2A. Mr. Martinez's refusal to comply with the July 20, 2009, was blatantly willful and enforcement of a federal district court's local rules is authorized under Fed. R. Civ. P. 83(a)(2).

Upon consideration of the entire file, the Court finds and concludes that Mr. Martinez fails to demonstrate some reason why the Court should reconsider and vacate its decision to dismiss this action. Therefore, the Motion to Reconsider will be denied. Accordingly, it is

ORDERED that the Motion for Rehearing (Doc. # 10), filed September 9, 2009, is construed as a Motion to Reconsider, filed pursuant to Fed. R. Civ. P. 59(e), and 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-01549-ZLW

Richard Martinez
Prisoner No. 75213
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 10/1/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk