

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01648-ZLW

PETER GEORGACARAKOS,

Plaintiff,

v.

HARRELL WATTS,  
DOCTOR BAXTER, and  
HARLEY LAPPIN,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

**NOV 18 2009**

**GREGORY C. LANGHAM**  
CLERK

---

---

ORDER DENYING MOTION FOR RECONSIDERATION

---

Plaintiff has filed *pro se* on October 30, 2009, a "Motion for Reconsideration" in which he asks the Court to reconsider and vacate the Court's Order of Dismissal and the Judgment filed in this action on October 22, 2009. The Court must construe the motion liberally because Plaintiff is not represented by an attorney. *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). For the reasons stated below, the motion 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 (10<sup>th</sup> Cir. 1991). Plaintiff filed the motion for reconsideration within ten days after the Judgment was entered in this action on October 22, 2009. Therefore, the Court will

consider the motion for reconsideration pursuant to Rule 59(e). **See id.** 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 *Servants of the Paraclete v. Does***, 204 F.3d 1005, 1012 (10<sup>th</sup> Cir. 2000).

The Court dismissed the instant action without prejudice because Plaintiff failed to file an amended pleading on the Court's Prisoner Complaint form as required by the Court's local rules. **See** D.C.COLO.LCivR 8.2A. Plaintiff was directed to file an amended pleading on the proper form in an order filed on July 16, 2009. In a minute order entered on August 24, 2009, that deadline was extended to September 23, 2009. However, Plaintiff never filed an amended pleading on the proper form. Plaintiff did file on September 1, 2009, a motion seeking to consolidate this action with another pending action. **See *Georgacarakos v. Wiley***, No. 07-cv-01712-MSK-MEH (D. Colo. filed Aug. 14, 2007). On September 2, 2009, Magistrate Judge Boyd N. Boland denied the motion to consolidate without prejudice because the motion was not properly filed in this action. **See** D.C.COLO.LCivR 42.1.


Plaintiff argues that the Court should vacate the order dismissing this action because he also filed a motion to consolidate in 07-cv-01712-MSK-MEH on July 21, 2009, and that motion remains pending. However, he fails to demonstrate the existence of an intervening change in controlling law or new evidence and he fails to convince the Court of any need to correct clear error or prevent manifest injustice. The fact that Plaintiff filed a motion to consolidate in another case does not excuse Plaintiff's

failure to comply with the order directing him to file an amended pleading in this action. Therefore, upon consideration of the request 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. Accordingly, it is

ORDERED that Plaintiff's "Motion for Reconsideration" filed on October 30, 2009, is denied.

DATED at Denver, Colorado, this 16 day of November, 2009.

BY THE COURT:

  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

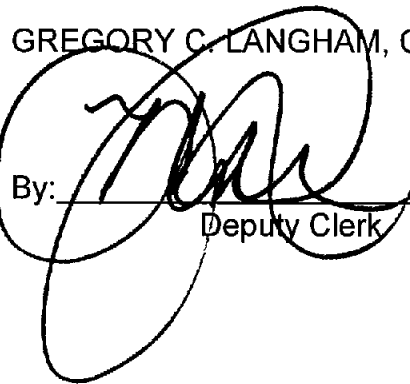
**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-01648-BNB

Peter Georgacarakos  
Reg No. 03029-036  
US Penitentiary ADX  
P.O. Box 8500  
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 11/18/09

GREGORY C. LANGHAM, CLERK

By:  \_\_\_\_\_  
Deputy Clerk