

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01709-BNB

SHANE McMILLAN,

Plaintiff,

v.

WILEY,  
FOX,  
JONES,  
JAVERNIK,  
COLLINS,  
FENLON,  
MADISON,  
NALLEY,  
WATTS,  
LAPPIN,  
DAVIS, and  
BUREAU OF PRISONS,

Defendants.

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

NOV 20 2009

GREGORY C. LANGHAM  
CLERK

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ORDER

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On October 22, 2009, Plaintiff Shane McMillan filed a *pro se* "Motion for Reconsideration and/or Clarification from Magistrate Judge Boyd N. Boland." Mr. McMillan is a prisoner in the custody of the United States Bureau of Prisons (BOP) at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. The Court will construe the Motion liberally as an Objection filed pursuant to 28 U.S.C. § 636(b)(1)(A).

Mr. McMillan initiated this action by filing a *pro se* Prisoner Complaint pursuant to 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of*

*Narcotics*, 403 U.S. 388 (1971). In an order filed on July 24, 2009, Magistrate Judge Craig B. Shaffer determined that Mr. McMillan's complaint was deficient because he made only collective allegations against the named Defendants without specifying how each Defendant has violated his constitutional rights. Therefore, Magistrate Judge Shaffer directed Mr. McMillan to cure this deficiency if he wished to pursue his claims in this action.

Mr. McMillan filed an amended prisoner complaint on September 29, 2009. On October 1, 2009, Magistrate Judge Boyd N. Boland determined that the amended complaint was deficient because it was single-spaced, illegible and failed to set forth a short and plain statement of his claims showing that he is entitled to relief pursuant to Fed. R. Civ. P. 8. Therefore, Magistrate Judge Boland directed Mr. McMillan to file a Second Amended Prisoner Complaint.

In his objections, Mr. McMillan appears to argue that these orders are contradictory because his original complaint was found to be too short, while his amended complaint was found to be too long. Moreover, he asserts that he has a limited education and does not have access to a typewriter.

Pursuant to 28 U.S.C. § 636(b)(1)(A) a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. The Court has reviewed the file and finds that Magistrate Judge Boland's order filed on October 1 is not clearly erroneous or contrary to law.

Pursuant to Fed. R. Civ. P. 8(a), a pleading must "contain (1) a short and plain statement of the grounds for the court's jurisdiction, . . . (2) a short and plain statement

of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought . . . .” The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1) which provides that “[e]ach allegation must be simple, concise, and direct.”


Mr. McMillan’s amended complaint consists of thirty-five pages of single-spaced cursive text. His handwriting is very difficult to read. Further, his allegations are not “simple, concise, and direct,” and he does not provide a “short and plain statement of [each] claim showing that” he is entitled to relief. Fed. R. Civ. P. (8)(a) & (d)(1). Mr. McMillan’s claims are repetitive and unnecessarily verbose and confusing. Therefore, Mr. McMillan’s objections will be overruled and he will be required to file a Second Amended Complaint if he wishes to pursue his claims in this action. Accordingly, it is

ORDERED that the Motion for Reconsideration, (Doc. No. 9), filed on October 22, 2009, is construed liberally as an Objection filed pursuant to 28 U.S.C. § 636(b)(1)(A), and is overruled. It is

FURTHER ORDERED that Mr. McMillan shall have **thirty (30) days from the date of this order** to cure the deficiency if he wishes to pursue his claims in this action.

DATED at Denver, Colorado, this 19 day of Nov., 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-01709-BNB

Shane McMillan  
Reg. No. 07580-091  
ADX – Florence  
PO Box 8500  
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 11/20/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk