

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02075-ZLW

RONALD CREIGHTON, JR.,

Plaintiff,

v.

SERGEANT DENUZI,
SERGEANT HAPP,
SERGEANT ALLEN,
SERGEANT TEGUE,
SERGEANT HARRIS,
U.S. MARSHAL STEVE WALLISCH,
LIEUTENANT DEL KLEINSCHMIDT,
CLAUDIA VAN BUREN, and
LIEUTENANT JAMES LUCAS,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 22 2009

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION FOR RECONSIDERATION

Plaintiff Ronald Creighton, Jr., has filed *pro se* on October 13, 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 September 24, 2009. The Court must construe the motion liberally because Mr. Creighton 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 (10th Cir. 1991). For the reasons stated below, the Motion for Reconsideration 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). Although the Motion for Reconsideration was not filed until October 13, 2009, Mr. Creighton attaches to the motion a certificate of mailing stating that the motion was mailed to the Court on October 6, 2009. Pursuant to the prisoner mailbox rule, ***see Houston v. Lack***, 487 U.S. 266, 270 (1988), the Court will deem the motion filed on that date. Therefore, because the Motion for Reconsideration was filed within ten days after the Judgment was entered in this action on September 24, 2009, ***see*** Fed. R. Civ. P. 6(a) (time periods of less than eleven days exclude intervening Saturdays, Sundays, and legal holidays), the Court will consider the Motion for Reconsideration pursuant to Rule 59(e), ***see Van Skiver***, 952 F.2d at 1243. 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 (10th Cir. 2000).

Mr. Creighton claimed in his complaint that his constitutional rights to due process and access to the courts were violated by the failure to provide him with access to discovery materials in his ongoing criminal case. He also claimed that his constitutional rights were violated when he was denied the necessary form to file an administrative grievance regarding his access to the discovery materials, although he concedes that he did manage to file a grievance as well as an appeal from the denial of that grievance. Finally, Mr. Creighton asserted a claim that he was overcharged for

medical requests and prescriptions in violation of Colorado state law. The Court dismissed the constitutional claims as legally frivolous and declined to exercise supplemental jurisdiction over the state law claim.

Mr. Creighton argues in the Motion for Reconsideration that his claims are not legally frivolous. 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. Therefore, upon consideration of the Motion for Reconsideration and the entire file, the Court finds that Mr. Creighton fails to demonstrate some reason why the Court should reconsider and vacate the order to dismiss this action. Accordingly, it is

ORDERED that the Motion for Reconsideration filed on October 13, 2009, is denied.

DATED at Denver, Colorado, this 21 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

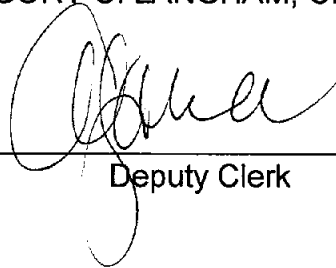
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Ronald Creighton, Jr.
Prisoner No. P01033415
Jefferson County Detention Facility
P.O. Box 16700
Golden, CO 80402

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/22/09

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk