

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 10-cv-00017-PAB-KMT

MICHAEL ABBOTT,

Plaintiff,

v.

BRIAN WEBSTER, Physician's Assistant,

Defendant.

ORDER

This matter is before the Court on the motion to reopen case [Docket No. 27] and the motion for appointment of counsel [Docket No. 30] filed *pro se* by plaintiff Michael Abbott. The Court must construe the motions liberally because Mr. Abbott 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).

The Court construes the motion to reopen case as a motion pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, which allows the Court to grant relief from a final judgment, order, or proceeding for “any other reason that justifies relief.” A movant seeking relief under Rule 60(b)(6) must show the existence of extraordinary circumstances that justify relief. See *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005). Furthermore, a motion under Rule 60(b)(6) “must be made within a reasonable time.” Fed. R. Civ. P. 60(c)(1).

The instant action was dismissed on October 4, 2010, pursuant to Mr. Abbott's notice of voluntary dismissal [Docket No. 23]. Although Mr. Abbott apparently now regrets his decision to voluntarily dismiss this action, he fails to identify the existence of any extraordinary circumstances that would justify reopening the case. Furthermore, the motion to reopen, which was filed nearly four and a half years after this action was dismissed, was not filed within a reasonable time. See *United States v. Mack*, 502 F. App'x 757, 759-60 (10th Cir. 2012) (finding the district court did not abuse its discretion in concluding a Rule 60(b) motion filed more than two and a half years after dismissal of § 2255 motion was not filed within a reasonable time); *Davis v. Warden*, 259 F. App'x 92, 94 (10th Cir. 2007) (concluding that unexplained delay of almost three years before filing a Rule 60(b)(6) motion appropriately could be considered beyond a reasonable time). Accordingly, it is

ORDERED that the motion to reopen case [Docket No. 27] and the motion for appointment of counsel [Docket No. 30] are DENIED.

DATED December 7, 2015.

BY THE COURT:

/s Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge