

April 19, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADOFILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 19 2011

GREGORY C. LANGHAM
CLERK

Civil Action No. 11-cv-00250-LTB

MICHAEL MILLIGAN,

Plaintiff,

v.

LOU ARCHULETA,
CHARLES SANCHEZ,
LANCE MIKLICH, and
KEVIN FURTON,

Defendants.

ORDER DENYING MOTION TO RECONSIDER

Plaintiff, Michael Milligan, filed *pro se* on April 12, 2011, a motion to reconsider, titled "Motion to Alter or Amend Judgment Pursuant to Fed. R. Civ. Proc. 52(b) and 59(e)." Mr. Milligan asks the Court to reconsider the order of March 30, 2011, which dismissed the complaint and this action pursuant to 28 U.S.C. § 1915(e)(2)(B) as legally frivolous. Judgment was entered on the same day.

The Court must construe liberally Mr. Milligan's filings because he 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 to reconsider will be denied.

The Court first will address Mr. Milligan's motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may "file either a

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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). A motion to alter or amend the judgment must be filed within twenty-eight days after the judgment is entered. **See** Fed. R. Civ. P. 59(e). The Court will consider Mr. Milligan’s motion to reconsider pursuant to Rule 59(e) because it was filed within twenty-eight days after the judgment was entered in this action on March 30. **See *Van Skiver***, 952 F.2d at 1243 (stating that motion to reconsider filed within ten-day limit for filing a Rule 59(e) motion under prior version of that rule should be construed as a Rule 59(e) motion).

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).

The Court dismissed the complaint and the instant action pursuant to § 1915(e)(2)(b) as legally frivolous for reasons discussed in detail in the March 30 dismissal order. Upon consideration of the liberally construed motion to reconsider and the entire file, the Court finds that Mr. Milligan fails to demonstrate some reason why the Court should reconsider and vacate the order to dismiss this action. Mr. Milligan 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, the motion to reconsider pursuant to Fed. R. Civ. P. 59(e) will be denied.

Because the Fed. R. Civ. P. 59(e) motion will be denied, the Court also will deny the motion pursuant to Fed. R. Civ. P. 52(b). On a party's motion filed no later than twenty-eight days after the entry of judgment, Rule 52(b) may be used to ask the Court to amend its findings, or make additional findings, and amend the judgment accordingly. The Court is without a basis to amend or make additional findings. Therefore, the motion pursuant to Fed. R. Civ. P. 52(b) also will be denied.

Accordingly, it is

ORDERED that the motion to reconsider titled "Motion to Alter or Amend Judgment Pursuant to Fed. R. Civ. Proc. 52(b) and 59(e), that Plaintiff, Michael Milligan, filed *pro se* on April 12, 2011, and which the Court has treated as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) and a motion for amended or additional findings pursuant to Fed. R. Civ. P. 52(b), is denied.

DATED at Denver, Colorado, this 19th day of April, 2011.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
Senior Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO


CERTIFICATE OF MAILING

Civil Action No. 11-cv-00250-BNB

Michael Milligan
Prisoner No. 42327
Colorado Territorial Correctional Facility
PO Box 1010
Canon City, CO 81215

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on April 19, 2011.

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk