

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 16-cv-00345-CMA-STV

JOSE MARTINEZ,

Plaintiff,

v.

K. NG CHAUMONT, RN,
RYAN WHITE, RN,
R. DUMIYE, RN, and
BRENDA HIGMAN (HIGMIN), LPN,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION OF OBJECTION FOR CASE CLOSED

This matter is before the Court on Plaintiff Jose Martinez's Motion of Objection for Case Closed on July 17, 2017. (Doc. # 118.) On July 17, 2017, the Court granted Defendants' Motion to Summary Judgment (Doc. # 70) upon the Recommendation of United States Magistrate Judge Scott T. Varholak (Doc. # 86). (Doc. # 112.) The Court's July 17, 2017, Order terminated Plaintiff's case. See (*id.* at 6.)

In the motion now before the Court, Plaintiff objects to the termination of his case. (Doc. # 118 at 1.) Plaintiff alleges that he attempted to contact the Court to request a new trial date and to inform the Court of his whereabouts as he was transferred between correctional facilities. (*Id.*) He claims that he was unable to do so because correctional officers at the various facilities did not assist him and "pu[t] it on

the next person so they [didn't] have to deal with it.” (*Id.* at 2.) Plaintiff requests the Court “to give [him] a trial date with lawyer so [he] can plead his case.” (*Id.*) Alternatively, Plaintiff asks “to verbally ask for appeal to higher court [sic].” (*Id.*)

Because Plaintiff proceeds *pro se*, this Court must construe his pleadings liberally. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). The Court therefore construes the instant motion as a motion for reconsideration of the Court’s July 17, 2017 Order. The Federal Rules of Civil Procedure do not explicitly authorize a motion for reconsideration. However, the Rules allow a litigant who was subject to an adverse judgment to file a motion to change the judgment pursuant to Rule 59(e) or a motion seeking relief from the judgment pursuant to Rule 60(b). *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). The grounds warranting reconsideration are limited and occur only in “exceptional situation[s].” *Proctor & Gamble v. Haugen*, 222 F.3d 1262, 1271 (10th Cir. 2000). “Absent extraordinary circumstances . . . the basis for the second motion must not have been available at the time the first motion was filed.” *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Grounds warranting a motion to reconsider include “(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Id.* “Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law.” *Id.* A motion for reconsideration is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing. See *Van Skiver*, 952 F.2d at 1243.

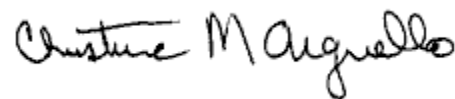
Plaintiff fails to allege an “exceptional situation,” see *Proctor & Gamble*, 222 F.3d at 1271, warranting reconsideration. Plaintiff does not argue “(1) an intervening change in the controlling law, (2) new evidence previously unavailable, [or] (3) the need to correct clear error or prevent manifest injustice.” See *Servants of the Paraclete*, 204 F.3d at 1012. Plaintiff merely reprises an argument the Court previously rejected: that he should have the services of a lawyer and is entitled to a trial. See (Doc. ## 36, 44, 79, 112.) Because Plaintiff revisits issues already addressed, his motion for reconsideration is DENIED. See *Van Skiver*, 952 F.2d at 1243.

In regard to Plaintiff’s alternative request “to verbally ask for appeal to higher court [sic],” see (Doc. # 118 at 2), the Court does not have the authority to grant such a request. Should Plaintiff wish to appeal the Court’s final order, the Court directs him to the Federal Rules of Appellate Procedures 3 and 4.

For the foregoing reasons, it is hereby ORDERED that Plaintiff’s Motion of Objection for Case Closed on July 17, 2017 (Doc. # 118) is DENIED.

DATED: December 14, 2017

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge