

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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| ANDRES R. SOSA, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Case No. 3:20cv382(VLB) |
| | : | |
| CORRECTIONAL OFFICER | : | |
| CHRISTOPHER SWEET, ET AL., | : | |
| Defendants. | : | |

**RULING ON MOTION FOR RECONSIDERATION
AND MOTION FOR APPOINTMENT OF COUNSEL**

The plaintiff, Andres R. Sosa (“Sosa”), is currently incarcerated at Cheshire Correctional Institution. He initiated this action by filing a complaint against forty-eight employees of the State of Connecticut Department of Correction, the Barcelona Nut Company, the Keefe Distribution Company, State of Connecticut Assistant Attorney General Neil Parille, Connecticut Commission on Human Rights and Opportunities (“CHRO”) Attorney Neil Kline, Uncasville Mayor Ronald McDaniel, and the Mohegan Tribes Reservation. See Compl., Doc. 1. He subsequently filed an amended complaint that named five new Department of Correction employees in addition to the forty-eight employees named in the complaint.¹ See Am. Compl., Doc. No. 10. On February 3, 2021, the Court

¹ The Amended Complaint named the following Department of Correction employees: Correctional Officers Sweet, Evans, Bower, Markovitz, Bauer, Cassidy, Morin, and Doe; Lieutenants Stadalnik, Kudzal, Iozzia, Gillette, Halloran, Eberle, and Chronin; Director of Security Santiago; Deputy Commissioner Quiros; District Administrators Murphy and Maldonado; Wardens Carlos, Faucher, Barone, and Martin; Deputy Warden Zegarzewski; Property Officer Muckle; Correctional Counselors Ramos, King, Collins, Crane, and Dumas; Correctional Counselor/Administrative Remedies Coordinator Daly; Captain Williams; Disciplinary Officer Investigator Nemeth; Commissary Account Manager Palmisano; Commissary Lead Operator Stack; Commissary Manager Supervisor Plus; Commissary Operator Cather; Health Services

dismissed in part allegations asserted in the amended complaint. See Ruling and Order, Doc. No. 15. Sosa moves for reconsideration of the dismissal of claims against thirty-six defendants and for the appointment of *pro bono* counsel. For the reasons set forth below, the Court will deny the motion for appointment of counsel and deny the motion for reconsideration, but explain why Plaintiff is not entitled to the relief requested.

I. Motion for Reconsideration [Doc. No. 25]

Sosa requests that the Court reconsider the dismissal without prejudice of Eighth and Fourteenth Amendment claims asserted in the amended complaint against Correctional Officers Sweet and Evans; Lieutenants Stadalnik, Kudzal, Iozzia, and Eberle; Director of Security Santiago; Deputy Commissioner Quiros; District Administrators Murphy and Maldonado; Wardens Carlos, Faucher, Barone, and Martin; Deputy Warden Zegarzewski; Property Officer Muckle; Correctional Counselors Ramos, King, Collins, Crane, and Dumas; Correctional Counselor/Administrative Remedies Coordinator Daly; Captain Williams; Disciplinary Officer Investigator Nemeth; Commissary Account Manager Palmisano; Commissary Lead Operator Stack; Commissary Manager Supervisor Plus; Health Services Administrator Labonte; Registered Nurse Dhillon, Health

Administrator Labonte; Advanced Practice Registered Nurses (“APRN”) Wright and Reischer; Registered Nurses Dhillon, Conahan, and Phillips, Health Services Program Director Benjamin; Nurse/Medical Remedies Coordinator Brennan; Director of Correctional Managed Health Care (“CMHC”) Clinical Services Wu; Assistant Director of CMHC Clinical Services Castro; Health Services Program Director Quality Improvement Gallagher; Drs. Dr. Farinella, Burns; Berger; and Fisher; and Director of Dental Services Benoit. See Am. Compl., Doc. No. 10, at 1-26. Sosa also re-named the Barcelona Nut Company, the Keefe Distribution Company, Assistant Attorney General Parille, CHRO Attorney Kline, Mayor McDaniel, and the Mohegan Tribes Reservation as defendants. *Id.* at 17-18, 22-23.

Services Program Director Benjamin; Nurse/Medical Remedies Coordinator Brennan; Director of CMHC Clinical Services Wu; Assistant Director of CMHC Clinical Services Castro; Dr. Farinella; Health Services Program Director Quality Improvement Gallagher; and Assistant Attorney General Parille. The Court severed and dismissed the claims asserted against these defendants as improperly joined under Rules 20 and 21, Fed. R. Civ. P. See Doc. No. 15 at 5-8, 12.

Generally, reconsideration will be granted only if the moving party can identify “controlling decisions or data that the court overlooked” and that would reasonably be expected to alter the court’s decision. *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995); see also D. Conn. L.R. 7(c). A party’s identification of “an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice” may also constitute sufficient reasons to grant a motion for reconsideration. *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust*, 729 F.3d 99, 104 (2d Cir. 2013) (citation and internal quotation marks omitted). A party may not, however, use a motion for reconsideration to re-argue prior issues that have already been decided, present “new theories” or arguments that could have been raised earlier, seek a new hearing “on the merits, or [to] otherwise tak[e] a second bite at the apple.” *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (internal quotation marks and citation omitted). “[W]here litigants have once battled for the court’s decision, they should neither be required, nor

without good reason permitted, to battle for it again.” *Virgin Atlantic Airways, Ltd. v. Nat’l Mediation Bd.*, 956 F.2d at 1255; Advisory Committee on Rules - 1983 Amendments, citing *RoadwayExpress Inc. v. Piper*, 447 U. S. 752 (1980); *Hall v. Cole*, 412 U. S. 1, 5 (1973).

A party who disagrees with a court’s decision may file a timely appeal and a motion for reconsideration should not be allowed to be deployed as a strategic tool for extending an appeal deadline. This principle applies equally where a party seeks to advance an argument previously made on the same grounds rejected by the court, and where a party seeks to advance a new argument it could have but failed to advance in the first instance.

To meet this standard, a motion for re-consideration must be accompanied by “a memorandum setting forth concisely the controlling decisions or data the movant believes the Court overlooked.” D. Conn. L. Civil R. 7(c).

Under Rule 7(c), D. Conn. L. Civ. R., a motion for reconsideration “shall be filed and served within seven (7) days of the filing of the decision or order from which relief is sought.” The Court ruled on the allegations asserted in the amended complaint on February 3, 2021. See Doc. No. 15. The motion for reconsideration is dated February 11, 2021 and was filed on February 22, 2021. As such, the motion is not timely.

In addition, the “law of the case” doctrine counsels that, when a court has ruled on an issue, that decision should be adhered to by that court in subsequent stages in the same case unless cogent and compelling reasons

militate otherwise.” *Johnson v. Holder*, 564 F.2d 95, 99 (2d. Cir. 2009) (internal quotation marks omitted).

Even if the Court overlooks the fact that the motion was not filed in a timely manner, the argument raised in the motion does not meet the strict standard applicable to motions for reconsideration. The amended complaint asserted First, Eighth, and Fourteenth Amendment claims that arose during Sosa’s confinement at Corrigan-Radgowski from November 2015 to May 2017. See Am. Compl., Doc. No. 10, at 28-128. Sosa included allegations regarding: the confiscation of a pair of his Michael Jordan sneakers with an orthotic lift and insoles on November 16, 2015, the confiscation of a second pair of his Nike sneakers with an orthotic lift and insoles seven months later on June 16, 2016, the disposition of a disciplinary report issued to him on June 15, 2016, his placement in various housing units under unconstitutional conditions of confinement in 2016 and early 2017, the loss of various personal property items in June and October 2016, the destruction of his CD player in April 2017, the denial of treatment for his serious mental health needs from October 2016 to June 2017, lack of access to legal materials and telephone calls in 2016 and 2017, pain that he experienced during an inadequate dental procedure performed in December 2016, his tooth that broke as he ate a bag of nuts, the denial of medical treatment for a skin condition and back, chest and groin pain, the improper processing of grievances and grievances appeals in 2016 and 2017, the February 2018 disposition of a CHRO matter, and the failure of Assistant Attorney

General Parille to enforce a settlement agreement entered in another case authorizing Sosa to purchase sneakers through an outside vendor. *Id.*

The Court concluded that the First, Eighth, and Fourteenth Amendment claims arising from the confiscation of items of Sosa's personal property, including two pairs of sneakers with orthotic lifts, the issuance of a disciplinary report, various restrictive conditions of confinement, the denial of medical treatment for several medical conditions, lack of access to legal materials and telephone calls, inadequate dental treatment, a broken tooth, the improper processing of grievances and grievances appeals, the disposition of CHRO matter, and the lack of enforcement of a settlement agreement reached in another federal case, were improperly joined in the amended complaint because those claims were unrelated to the claim that Dr. Burns, Dr. Berger, APRN Reischerl and APRN Wright failed to provide him with treatment for his serious mental health conditions from October 2016 through May 2017 in violation of his Eighth Amendment rights. See Doc. No. 15 at 5-8. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, the Court severed and dismissed the First, Eighth, and Fourteenth Amendment claims, other than the Eighth Amendment deliberate indifference to mental health needs claim, without prejudice and informed Sosa that he could pursue the claims in separately filed actions. *Id.* at 12.

Sosa contends without explanation that the Court erred in dismissing the Eighth and Fourteenth Amendment claims asserted against defendants Sweet,

Evans, Stadalnik, Kudzal, Iozzia, Eberle; Santiago, Quiros; Murphy, Maldonado, Carlos, Faucher, Barone, Martin; Zegarzewski, Muckle, Ramos, King, Collins, Crane, Dumas, Daly, Williams, Nemeth; Palmisano, Stack, Plus; Labonte; Dhillon, Benjamin, Brennan; Wu; Castro, Farinella, Gallagher, and Parille (the “Dismissed Defendants”) because all of the claims relate to each other.

Sosa has not identified any information attached to or facts alleged in the amended complaint, or anything else in the record that the Court overlooked in determining that the Eighth and Fourteenth Amendment claims asserted against the Dismissed Defendants are related and thus were properly joined in the amended complaint. Rather, he simply disagrees with the Court’s finding, asserting they are related without explanation.

Accordingly, the motion for reconsideration of the Court’s ruling dismissing Eighth and Fourteenth Amendment claims against thirty-six defendants as unrelated to and improperly joined with the Eighth Amendment claim of deliberate indifference to Sosa’s mental health needs is denied.

The Court trusts that the explanation provided will guide Plaintiff’s litigation of this case and that he will not file motions in the future seeking to set aside the Court’s rulings, whether through reconsideration or otherwise, unless his motion is accompanied by a memorandum of law which meets the stringent applicable standard. It is an abuse of the judicial process to knowingly file a frivolous motion; and abuse of the judicial process is sanctionable.

Motion for Appointment of Counsel [Doc. No. 27]

Sosa seeks the appointment of *pro bono* counsel. Unlike criminal defendants, civil litigants do not have a constitutional right to the appointment of counsel. See *Leftridge v. Conn. State Trooper Officer No. 1283*, 640 F.3d 62, 68-69 (2d Cir. 2011) (“A party has no constitutionally guaranteed right to the assistance of counsel in a civil case.”). Thus, in a civil case, the decision to appoint *pro bono* counsel for an indigent litigant is discretionary. See *Hodge v. Police Officers*, 802 F.2d 58, 60 (2d Cir. 1986).

In considering whether to exercise its discretion, a district court must initially determine whether the *pro se* litigant’s claim “seems likely to be of substance.” *Id.* at 61. Even if the claim “is not frivolous, [appointment of] counsel is often unwarranted where the [litigant’s] chances of success are extremely slim[.]” *Ferrelli v. River Manor Health Care Ctr.*, 323 F.3d 196, 204 (2d Cir. 2003) (quoting *Hodge*, 802 F.2d at 60). Although the Court has determined that the Eighth Amendment deliberate indifference to mental health needs claim is plausible, the Court cannot conclude at this time that Sosa is likely to succeed on the merits of that claim. See, e.g., *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 174 (2d Cir. 1989) (reiterating the importance of requiring indigent litigants seeking appointed counsel “to first pass the test of likely merit.”)

Additionally, a litigant must show that he attempted to secure legal representation and assistance independently before a district court will consider the appointment of *pro bono* counsel. See *Hodge*, 802 F.2d at 62. Sosa states

that he contacted one law firm and two solo practitioners in November 2020, but neither the attorneys who worked for the firm, nor the solo practitioners were interested in representing him. Sosa acknowledges that on an unspecified date, he contacted the Inmates' Legal Aid Program ("ILAP") seeking assistance and copies of or information about this Court's Local Rules of Civil Procedure. He states that in response to his request, he received a copy of the table of contents describing the Local Rules of Civil Procedure. The Court attaches the table of contents of the Federal Rules of Civil Procedure to this ruling ("Exhibit A") , and notes that this Court's chambers practices are included in the docket of this case [Doc. No. 21]. He does not indicate whether he sought copies of specific local rules after reviewing the table of contents. He states that he is waiting to receive materials from an Attorney named Nicole Gagnon who works at ILAP. Sosa has not demonstrated that he is unable to secure the assistance of counsel in litigating this case.

Sosa references an earlier settlement and has not filed his inmate account statement for the period beginning six months prior to the date he file the case to and including the reporting period next preceding the date the statement was filed. As a consequence, he has not established that he is unable to afford an attorney

Accordingly, the motion for appointment of counsel is denied without prejudice.

Conclusion

The Motion for Reconsideration, [Doc. No. 25], of the Ruling, [Doc. No. 15], dismissing in part claims asserted in the amended complaint is DENIED with a thorough explanation of the applicable legal standard for Sosa's future reference.

The Motion for Appointment of Counsel, [Doc. No. 27], is DENIED without prejudice. Sosa may file a new motion at a later stage of the litigation of the case, after he has made additional attempts to secure legal assistance independently without success, establishes that he has been and is still indigent, and establishes that his case has likely merit.

SO ORDERED.

Dated at Hartford, Connecticut: September 27, 2021.

/s/

Vanessa L. Bryant
United States District Judge

EXHIBIT A

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