

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 10-21455-CIV-HUCK/BANDSTRA

BENJAMIN WHITFIELD,

Plaintiff,

v.

LUIS PAZ, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM
FINAL JUDGMENT OR ORDER**

THIS MATTER is before the Court on Plaintiff's Motion for Relief from Final Judgment or Order (D.E. # 53), filed June 28, 2012. Plaintiff commenced the instant action pursuant to 42 U.S.C. § 1983 on May 5, 2010. On November 10, 2010, Magistrate Judge Patrick A. White issued a Report and Recommendation in which he recommended that the case be dismissed. The Court, over Plaintiff's objections, adopted the findings of fact and conclusions of law in the Report and dismissed the case with prejudice on November 24, 2010. The Eleventh Circuit subsequently dismissed Plaintiff's appeal for want of prosecution, effective July 15, 2011. Plaintiff now seeks relief from this Court's previous dismissal of this action pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure.

Under Rule 60(b)(1), a district court "may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons . . . mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). Rule 60(b)(1) "encompasses mistakes in the application of the law[,] including judicial mistakes." *U.S. v. \$1,449,473.32 in U.S. Currency*, 152 F. App'x 911, 912 (11th Cir. 2005) (quoting *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 840 (11th Cir. 1982)). Claims under Rule 60(b)(1) must be brought within one year from the district court's final judgment. Fed. R. Civ. P. 60(c)(1). The Eleventh Circuit has held that the one-year statute of limitation is not tolled by an appeal. *U.S. Currency*, 152 F. App'x at 912 (citing *Gulf Coast Bldg. & Supply Co. v. Int'l Broth. of Elec. Workers*, 460 F.2d 105, 108 (5th Cir. 1972)).

The instant Motion, therefore, is untimely because it was not filed within one year of this Court's order of dismissal—November 24, 2011. Accordingly, it is hereby

ORDERED that the Motion for Relief from Final Judgment or Order is DENIED.

DONE and ORDERED in Chambers at Miami, Florida, July 2, 2012.



Paul C. Huck
United States District Judge

Copies furnished to:

Magistrate Judge Patrick A. White
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