

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

STEVEN EUGENE SMITH,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 5:16-CV-80 (MTT)
)	
Warden SAM ZANDERS, et al.,)	
)	
Defendants.)	
)	

ORDER

Plaintiff Smith, pro se, filed a motion to reopen his case over seven months after filing a notice of voluntary dismissal. Doc. 9 at 1. Smith’s case was closed after the Court received a “Request to dismiss 42 [U.S.C.] § 1983 without prejudice,” wherein someone purporting to be Smith wrote “I request that this court dismissed (sic) the recently filed 42 [U.S.C.] § 1983 without prejudice.” Doc. 5 at 1. “5:16-cv-80” was inscribed in the top, right-hand corner. *Id.* The handwriting in this document matches Smith’s complaint. *Compare* Doc. 1 *with* Doc. 5. Smith does not assert that he filed the notice of dismissal while operating under a misunderstanding or mistake as to the effect of his notice of dismissal.¹ Rather, Smith argues that he did not file the “request of motion to voluntarily dismiss this action in above-styled case.” Doc. 9 at 1. Smith continues by requesting that the Court “either produce[] the motion alleged by this court to dismiss this action or reopen the case” *Id.*

Magistrate Judge Stephen Hyles construed Smith’s motion as a motion for reconsideration under Rule 60(b). Doc. 11 at 1. The Magistrate Judge concluded that Smith in fact filed the notice of dismissal and directed the Clerk to mail Smith a copy of

¹ The Magistrate Judge noted that even if Smith filed his notice of dismissal due to a misunderstanding of the procedural rules, the misunderstanding of the rules would not warrant relief under Rule 60(b)(1) or Rule 60(b)(6). Doc. at 11 at 2 & n.2.

his notice of dismissal. *Id.* at 2-3. As the Magistrate Judge noted, the dismissal was without prejudice. *Id.* at 3. Further, the statute of limitations would not appear to bar Smith from refiling his claim—a § 1983 claim for wrongful conviction—because, as the Magistrate Judge noted, Smith’s claim does not accrue until his underlying conviction has been invalidated. *Id.* at 3 n.3. The Magistrate Judge accordingly recommends denying Smith’s motion. *Id.* at 3. Smith did not file an objection to the Recommendation, and the time for doing so has expired.

The Court has carefully reviewed the Recommendation, and accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation (Doc. 11) is **ADOPTED** and made the order of this Court.

SO ORDERED, this 13th day of April, 2017.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT