

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

**DONALD FRANK SMITH,**

Plaintiff,

v.

**DEPARTMENT OF CORRECTIONS  
VALDOSTA STATE PRISON, et al.,**

Defendants.

Civil Action No. 7:12-CV-23 (HL)

**ORDER**

Before the Court is Plaintiff's Motion to Re-Open Order of the District Court Judge (Doc. 52) brought under Federal Rule of Civil Procedure 60. The motion appears to be a request that the Court provide relief from its Order (Doc. 19) denying Plaintiff's motion for the appointment of counsel (Doc. 16). The motion is denied as untimely. The Court construes Plaintiff's Rule 60 motion as falling under Rule 60(b) since he does not base his argument for relief on any of the reasons listed in subpart (a). However, any motion brought under subpart (b) "must be made within a reasonable time" of the entry of the order from which the party seeks relief. Fed. R. Civ. Pro. 60(c). The Order denying Plaintiff's request for the appointment of counsel was entered on June 27, 2012. Even if there was some delay before Plaintiff received that Order because he was moved to a

different prison, he clearly knew the Court had not appointed an attorney to represent him and should have sought relief before now.

Even if Plaintiff's motion were timely filed, it must still be denied for it does not state any grounds for the Court to provide relief from the earlier Order. Plaintiff does not contend he discovered new evidence for the Court's consideration or that the earlier Order was the result of fraud, mistake, or any of the other reasons listed in Rule 60(b). Rule 60 motions are subject to a "significantly higher standard" than that applied to motions brought under Federal Rule of Civil Procedure 59(e), which "may not be used to relitigate old matters, raise arguments or present evidence that could have been raised prior to the entry of judgment." Sherrod v. Palm Beach Cty. School Dist., 237 F. App'x 423, 425 (11th Cir. 2007) (internal quotations and citations omitted). Because Plaintiff's Rule 60 motion does nothing more than re-state arguments that should have been raised in his initial motion for the appointment of counsel, it must be denied.

**SO ORDERED**, this the 4<sup>th</sup> day of March, 2014.

**s/ Hugh Lawson**  
**HUGH LAWSON, SENIOR JUDGE**

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