

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MOHAMMAD ZAKI AMAWI,

Plaintiff,

v.

No. 13-cv-866-JPG-RJD

J.S. WALTON, D. SCOTT DODRILL, BRIAN K. DAVIS, LESLIE SMITH, HARLEY LAPPIN, ERIC HOLDER, THOMAS R. KANE, CHARLES SAMUELS, JR., MICHAEL K. NALLEY, PAUL M. LAIRD, AMBER NELSON, D. SCHIAVONE, APRIL CRUITT, WILLIAM FALLS, J. SIMMONS, T. CAPALDO, STEPHEN COLT, WENDY J. ROAL, LISA J. HOLLINGSWORTH, JOHN PARENT, STEVE JULIAN, DAN SPROUL, CALVIN JOHNSON, JEFF BANEY, PAUL KELLY, STEVEN CARDONA, M. NUEMANN, G. BURGESS, LAWRENCE HOWARD, E. GARCIA, HENRY RIVAS, FEDERAL BUREAU OF PRISONS and JOYCE CONLEY,

Defendants.

**MEMORANDUM AND ORDER**

This matter comes before the Court on plaintiff Mohammad Zaki Amawi's motion for an extension of time to object to Magistrate Judge Reona J. Daly's Report and Recommendation ("Report") (Doc. 203) and motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(a) (Doc. 205).

The Court entered judgment in this case on December 19, 2016, after adopting Magistrate Judge Daly's Report recommending that the Court the motion for summary judgment filed by the remaining defendants. That motion had been filed on October 29, 2015, and Amawi had responded on April 19, 2016. Magistrate Judge Daly issued the Report on November 17, 2016, and the Clerk of Court mailed it to Amawi the following day. Attached to the Report was a notice of the fourteen-day objection period allowed under 28 U.S.C. § 636(b)(1) and Local Rule 73.1(b). Not having received any objections

within the month following the Report, the Court reviewed the Report for clear error. Finding none, on December 19, 2016, the Court adopted the report, granted the defendants' motion for summary judgment, and directed the Clerk of Court to enter judgment accordingly. The Clerk of Court entered judgment that day and mailed the Court's order and the judgment to Amawi on December 21, 2016. In the meantime, on December 20, 2016, Amawi sent a letter to the Court notifying him he had been transferred from the United States Penitentiary at Beaumont, Texas, a high security facility, to the Federal Correctional Institute (a medium security facility) at the same location. The Court received and docketed the change of address notice on December 27, 2016. No mail sent to Amawi was ever returned as undeliverable.

**I. Motion for Extension of Time to Object (Doc. 203)**

Amawi drafted this motion on December 13, 2016, and mailed it on December 20, 2016. The Clerk of Court received and docketed the motion on December 27, 2016. In the motion, Amawi asks the Court for an extension of time to object to the Report. He states that he only received the Report on November 28, 2016, has had limited access to the law library and the prison computers, has had multiple medical issues requiring his attention, and did not have access to his property immediately following his arrival at the new facility.

The Court has some sympathy for the delay in getting Amawi the Report from its issuance on November 17, 2016, to its receipt on November 28, 2016, and might have been inclined to grant a motion for extension of time filed shortly thereafter. However, Amawi did not draft his request for an extension until more than two weeks after he received the Report, and it was not postmarked until a week after that. Requesting an extension of time did not require access to the law library or to a computer or to his legal materials, so Amawi was fully capable of preparing one shortly after he received the Report. Instead, he waited until the objection period had closed. This was too late.

## II. Motion for Relief from Judgment (Doc. 205)

Amawi cites Rule 60(a) as the authority for this motion, but that provision only allows for relief based on clerical mistakes or mistakes arising from oversights and omissions. Amawi has pointed to no such mistake in this case. Instead, the Court believes he may have intended to rely on Rule 60(b) as a basis for vacating the judgment.

It is well settled that Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances. *Gonzalez v. Crosby*, 545 U. S. 524, 535 (2005); *McCormick v. City of Chi.*, 230 F.3d 319, 327 (7th Cir. 2000) (citing *Dickerson v. Board of Educ.*, 32 F.3d 1114, 1116 (7th Cir. 1994)). Rule 60(b) allows a court “to address mistakes attributable to special circumstances and not merely to erroneous applications of law.” *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). The rule authorizes a Court to grant relief from judgment for the specific reasons listed in the rule but does not authorize action in response to general pleas for relief. *See Young v. Murphy*, 161 F.R.D. 61, 62 (N.D. Ill. 1995). It is also not an appropriate vehicle for addressing simple legal error, for rehashing old arguments, or for presenting arguments that should have been raised before the court made its decision. *Russell*, 51 F.3d at 749; *Rutledge v. United States*, 230 F.3d 1041, 1052 (7th Cir. 2000); *Young*, 161 F.R.D. at 62; *In re Oil Spill by “Amoco Cadiz,”* 794 F. Supp. 261, 267 (N.D. Ill. 1992), *aff’d*, 4 F.3d 997 (7th Cir. 1993) (Table).

In this motion, Amawi makes only a generalized plea for relief. He asks the Court to vacate the judgment in this case because he was in solitary confinement without his legal materials beginning September 17, 2016, (he does not say when he was released from solitary) and did not have an opportunity to respond to any Court order. The Court has reviewed the docket sheet and has found that there were no Court orders after September 17, 2016, to which Amawi could have responded other than the Report. As noted above, Amawi had sufficient time after receiving the Report to ask for an

extension of time to object, but he failed to do so.

More importantly, in an abundance of caution, the Court has reviewed the defendants' summary judgment motion (Doc. 176), Amawi's response (Doc. 190), and the Report *de novo*, which is exactly what would have happened had Amawi made a timely objection to the Report. The Report addresses the two claims that remained at that time: Count 1 alleging a procedural due process violation and Count 2 alleging an equal protection violation. Both counts concern Amawi's placement and retention in the Communications Management Unit ("CMU") at the United States Penitentiary at Marion, Illinois ("USP-Marion"), where Amawi was housed from January 2010 to August 2014. In the CMU, inmates' opportunities for communication and visits with those outside the prison are severely limited and monitored, and the inmates do not have all the other opportunities available to inmates in the general population such as, for example, certain prison jobs, access to the mail room, and access to executive staff members. The inmates may, however, interact with others in the CMU under conditions similar to those in general population units.

With respect to Count 1, Magistrate Judge Daly found that it was not clearly established at the time Amawi was in the CMU that the conditions there presented an atypical and significant hardship compared with the normal incidents of prison life such that they constituted a deprivation of a liberty interest. Without a deprivation of a protected interest, there can be no due process violation. Thus, the defendants were entitled to qualified immunity. Whether conditions of confinement pose an atypical and significant hardship is determined by looking at the length of the confinement in the conditions and the harshness of those conditions, viewed on a sliding scale. Thus, especially harsh conditions for a short period can qualify, or mildly onerous conditions for a substantial period of time can qualify. Magistrate Judge Daly found that, at the time Amawi was in the CMU, neither the Supreme Court nor the Court of Appeals for the Seventh Circuit has considered whether the communications restrictions like

Amawi faced in the CMU, in light of the freedoms allowed within the unit and the length of Amawi's detention, deprived a CMU inmate of a protected liberty interest.<sup>1</sup>

With respect to Count 2, Magistrate Judge Daly found that several statements suggesting a discriminatory intent against Muslims in Amawi's CMU placement were made by people who had no personal involvement in deciding whether to place or retain Amawi in the CMU, either as a decisionmaker or as a "cat's paw" influencing a decisionmaker. There was no evidence of discrimination from those actually making or influencing the CMU placement and retention decisions.

The Court has reviewed the Report *de novo* and finds that it is correct for the reasons stated therein. Accordingly, even if Amawi had filed a timely objection to the Report, the Court would have adopted it anyway.

### **III. Conclusion**

For the foregoing reasons, the Court **DENIES** Amawi's motion for an extension of time to object to the Report (Doc. 203) and motion for relief from judgment (Doc. 205).

**IT IS SO ORDERED.**

**DATED: April 10, 2017**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**

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<sup>1</sup> After Amawi was released from the CMU, the Court of Appeals for the District of Columbia Circuit decided that the CMU conditions deprived inmates of a liberty interest. *See Aref v. Lynch*, 833 F.3d 242, 257 (D.C. Cir. 2016).