IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MIGUEL A. SUAREZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 15-CV-637-NJR-DGW**
	)	
WARDEN RICHARD HARRINGTON,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

Pending before the Court is a Motion for Reconsideration filed by Plaintiff Miguel A. Suarez. (Doc. 37). Suarez filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 alleging that his constitutional rights were violated while he was incarcerated at Menard Correctional Center. (Doc. 1, pp. 3-4). After Suarez's amended complaint was screened pursuant to 28 U.S.C. § 1915A, Suarez was allowed to proceed against Defendants Lt. Timothy R. Veath and C/O David T. Johnson for an Eighth Amendment violations based on the premise that an inmate's constitutional rights may be violated when prison officials impose disciplinary sanctions against a prisoner that are not proportional to the conduct at issue. (*See* Doc 6, p. 4; Doc. 16, pp. 5-7). Defendants Veath and Johnson then filed a motion to dismiss asserting that they were entitled to qualified immunity on Suarez's Eighth Amendment claim. (Doc. 23, ¶6). Magistrate Judge Wilkerson then granted Suarez leave to file a Second Amended Complaint, which added a claim against Defendant Harrington. (Doc. 32, p. 2). Magistrate Judge Wilkerson found

that the Amended Complaint did not state any additional claims against Defendants Veath and Johnson and thus the claims against those Defendants remained unchanged, and the Motion to Dismiss filed remained pending. (Doc. 31, p. 5). This Court ultimately granted the Motion to Dismiss, finding that Defendants Veath and Johnson were entitled to qualified immunity. (Doc. 36, p. 5).

Suarez now asks the Court to reconsider that ruling, explaining that his failure to comprehend the deadline to respond to the motion to dismiss was due to his lack of knowledge on legal procedures. (Doc. 37, p.1). Suarez asserts that he has only a ninth grade education and did not know that he still had to respond to the motion to dismiss after being granted leave to file a Second Amended Complaint. (Doc. 37, p.1). Defendants Veath and Johnson have filed a response opposing Suarez's motion. (Doc. 38).

Although Defendants Veath and Johnson suggest that it is appropriate to consider Suarez's motion under the standards set forth in Rule 59(e) or Rule 60(b), the motion is governed by Rule 54(b), because the order granting the Motion to Dismiss as to Defendants Veath and Johnson did not adjudicate all claims, and final judgment has not yet been entered in this case. FED. R. CIV. P. 54(b) (Non-final orders "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."); *see also Encap, LLC v. Scotts Co., LLC*, No. 11-C-685, 2014 WL 6386910, at *1 (E.D. Wis. Nov. 14, 2014) ("Fed. R. Civ. P. 59(e) is not applicable here since no final judgment has been entered."). Regardless, "motions to reconsider an order under Rule 54(b) are judged by largely the same standard as motions to alter or amend a

judgment under Rule 59(e)." *Woods v. Resnick,* 725 F. Supp. 2d 809, 827-28 (W.D. Wisc. 2010).

A motion to reconsider is proper where the Court has misunderstood a party, where the Court has made a decision outside the adversarial issues presented to the Court by the parties, where the Court has made an error of apprehension (not of reasoning), where a significant change in the law has occurred, or where significant new facts have been discovered. *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990). The Court has the inherent power to reconsider non-final orders, as justice requires. *Akzo Coatings, Inc. v. Aigner Corp.*, 909 F. Supp. 1154, 1160 (N.D. Ind. 1995) ("[A] motion to reconsider an interlocutory order may be entertained and granted as justice requires"). A motion to reconsider "essentially enables a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). "Disposition of a motion for reconsideration is entrusted to the district court's discretion." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996).

Suarez claims that he failed to comprehend the deadline to respond to the Motion to Dismiss and he did not know that he still had to respond to said motion after being granted leave to file a Second Amended Complaint. (Doc. 37, p.1). This Court, however, did not grant the Motion to Dismiss based on Suarez's procedural failure to respond, which it could have done pursuant to this Court's Local Rule 7.1(c). Instead, the Court considered the merits of the motion and ultimately determined Veath and Johnson were

entitled to qualified immunity because there was no clearly established case law finding imposition of a term of segregation in violation of a state statute violates a defendant's Eighth Amendment rights, and that imposition of such a term was not "so egregious that no reasonable person could have believe that it would not violated clearly established rights." (Doc. 36, pp. 4-5) (referencing *Hope v. Pelzer*, 536 U.S. 730, 739-40 (2002)). Nowhere in Suarez's Motion for Reconsideration does he indicate the Court made an error of law in finding that Defendants are protected by qualified immunity.

Accordingly, Suarez's Motion for Reconsideration (Doc. 37) is **DENIED**.

IT IS SO ORDERED.

DATED: July 18, 2017

NANCY J. ROSENSTENGEL
United States District Judge