

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

ERIC D. SMITH,)
)
Petitioner,)
v.) No. 2:10-cv-293-JMS-DML
)
SUPERINTENDENT BASINGER,)
)
Respondent.)
)

Order Discussing Petitioner's Motion to Re-open Case

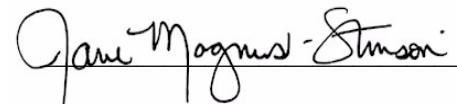
This action in which Eric Smith sought a writ of habeas corpus was dismissed without prejudice in a Judgment entered on the clerk's docket on April 29, 2011.

Smith has filed a motion to re-open case, which because of its timing relative to the entry of final judgment on the clerk's docket, must be treated as a motion for relief from judgment pursuant to Rule 60(b) of the *Federal Rules of Civil Procedure*. *See United States v. Deutsch*, 981 F.2d 299, 301 (7th Cir. 1992) ("substantive motions to alter or amend a judgment served more than ten days after the entry of judgment are to be evaluated under Rule 60(b).").¹

Smith's post-judgment motion [36] is **denied** for these reasons: First, it was not brought within a "reasonable time" as required by Fed.R.Civ.P. 60(c). Second, it seeks relief premised on an asserted legal error, which is not a valid basis upon which relief can be granted under rule 60(b). *See Marques v. FRB*, 286 F.3d 1014, 1018-19 (7th Cir. 2002) ("A legal error is not one of the specified grounds for [a 60(b) motion]. In fact, it is a forbidden ground."). And third, this action was dismissed without prejudice. "[A]fter a dismissal without prejudice, the plaintiff can resurrect his lawsuit only by filing a new complaint." *U.S. v. Ligas*, 549 F.3d 497, 503 (7th Cir. 2008).

IT IS SO ORDERED.

Date: 04/30/2012



Hon. Jane Magnus-Stinson
United States District Court
Southern District of Indiana

¹The current version of Rule 59 of the *Federal Rules of Civil Procedure* permits a Rule 59(e) motion to be filed within 28 days after the entry of judgment. This change is of no consequence here, where Smith's post judgment motion was filed more than 28 days after the entry of judgment.

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