

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JOSEPH LEE JONES,

Plaintiff,

v.

CASE NO. 18-3056-SAC

BUREAU OF PRISONS, et. al,

Defendants.

ORDER

Plaintiff filed this *pro se* Bivens-type action alleging cruel and unusual punishment in violation of the Eighth Amendment and medical malpractice. On April 3, 2018, the Court dismissed this matter without prejudice for failure to pay the filing fee by the Court's deadline. (Doc. 5). The Court found that Plaintiff is subject to the "three-strikes" provision under 28 U.S.C. § 1915(g). On February 18, 2021, Plaintiff filed a Motion to Reopen (Doc. 7).

Plaintiff's motion is treated as a motion filed under Rule 60(b) of the Federal Rules of Civil Procedure, seeking relief from judgment entered in this matter. *See Weitz v. Lovelace Health System Inc.*, 214 F.3d 1175, 1178 (10th Cir. 2000). Rule 60(b) provides in relevant part that:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it

prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

A Rule 60(b) motion provides extraordinary relief which “may only be granted in exceptional circumstances.” *Amoco Oil Co. v. United States Environmental Protection Agency*, 231 F.3d 694, 697 (10th Cir. 2000). The decision to grant such relief “is extraordinary and may only be granted in exceptional circumstances.” *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1009 (10th Cir. 2000) (quotation marks omitted).

Having reviewed the record, the Court denies Plaintiff’s motion to reopen. Plaintiff alleges that he is no longer subject to the “three-strikes” provision because he is now civilly committed. However, the provision applied to Plaintiff when he initiated this action and this case has been closed for almost three years. The Court finds Plaintiff has failed to show good cause or “exceptional circumstances” warranting relief under Rule 60(b).

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Reopen (Doc. 7) is **DENIED**.

IT IS SO ORDERED.

Dated February 19, 2021, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge