

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION**

**CHARLES A. TREECE**

**CIVIL ACTION NO. 10-1066**

**VERSUS**

**JUDGE ROBERT G. JAMES**

**BUDDY CALDWELL, ET AL.**

**MAG. JUDGE KAREN L. HAYES**

**ORDER**

Pending before the Court is a “Motion for Relief from Judgment under F.R.C.P. Rule (b)(6)” [Doc. No. 17] filed by Plaintiff Charles A. Treece (“Treece”). Treece contends that Magistrate Judge Karen L. Hayes improperly denied his motion for an evidentiary hearing on September 27, 2010, and states that he “is aware . . . that a denial of a request for an evidentiary hearing is fatal in a habeas corpus request.” *Id.* at p. 1. Therefore, he requests that “Judgement [sic] be reversed under F.R.C.P. 60(b)(6) because at least one circuit has held a denial is a ‘fundamental miscarriage of justice.’” *Id.* at p. 2.

Treece originally brought this action pursuant to 42 U.S.C. § 1983, contending that he and others in the Louisiana Department of Corrections system are suffering injuries as a result of their exposure to environmental tobacco smoke (“ETS”).

On July 21, 2010, the Court struck Treece’s Complaint based on its determination that (1) Treece had three strikes for previous frivolous filings, (2) Treece’s allegations were insufficient to show that he was in imminent danger of serious physical injury, and (3) he had failed to pay the filing fee as ordered by the Magistrate Judge. [Doc. No. 12].

Treece appealed the Court’s July 21, 2010 Order to the United States Court of Appeals for the Fifth Circuit. However, he failed to comply with the Fifth Circuit’s order, and his appeal was

dismissed for lack of prosecution on September 13, 2010.

Treece then filed his motion for an evidentiary hearing on September 23, 2010, after his case in this Court and the Fifth Circuit had been dismissed. On September 27, 2010, the Magistrate Judge denied his motion for an evidentiary hearing in a closed case.

In essence, Treece now timely appeals the Magistrate Judge's September 27, 2010 Order. The Court finds that the Magistrate Judge's Order is neither contrary to law nor clearly erroneous. Although Treece cites law allegedly applicable to *habeas corpus* proceedings, he brought a civil rights action under § 1983, and, thus, *habeas corpus* law is inapplicable. Additionally, Treece has asserted no basis under Rule 60(b)(6) for the Court to set aside its July 21, 2010 Order, reopen this case, and hold an evidentiary hearing. Accordingly,

IT IS ORDERED that Treece's "Motion for Relief from Judgment under F.R.C.P. Rule (b)(6)" [Doc. No. 17] is DENIED.

**MONROE, LOUISIANA**, this 13th day of October, 2010.

  
ROBERT G. JAMES  
UNITED STATES DISTRICT JUDGE