

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FELIPE OTEZE FOWLKES,

Plaintiff,

v.

Civil Action No. 15-cv-13243-IT

**SUPERINTENDENT LISA A.
MITCHELL, et al.,**

Defendants.

**ORDER DISMISSING CASE AND DENYING FEDERAL RULE OF CIVIL
PROCEDURE 59(E) MOTION**

September 8, 2016

TALWANI, D.J.

This court previously found Plaintiff to be a three-strike litigant pursuant to 28 U.S.C. § 1915(g), Fowlkes v. Barry, et al., Civil Action No. 14-12659-NMG (Mem. & Order, Docket No. 4 at 7); see also Mem & Order [#6], and that the generalized and speculative nature of Plaintiff's allegations of possible future harm did not satisfy his burden of showing imminent danger of serious physical injury for purposes of application of the exception to the three-strikes rule, Mem. & Order 4 [#52]. Accordingly, on August 11, 2016, the court denied Plaintiff's Motion for Leave to Proceed in Forma Pauperis [#2] and ordered that the action be dismissed in its entirety unless, within 21 days, Plaintiff pays the \$350.00 filing fee and \$50.00 administrative fee. Mem. & Order 4-5 [#52]. More than 21 days have passed since the court's order, and Plaintiff has not paid the filing and administrative fee.

Plaintiff has filed a motion for an order amending the August 11, 2016 order so that he may proceed in forma pauperis. Pl.'s Fed. R. Civ. P. Rule 59(e) Mot. [#54] ["Pl.'s Mot."]. This

request for reconsideration is denied. The court has carefully considered the “imminent danger” exception and finds it inapplicable here, for the reasons set forth in the August 11, 2016 order.

Plaintiff’s motion requests in the alternative that the court issue an order enlarging the time to August 11, 2018 for filing a Rule 60(b)(6) motion for relief from judgment. Pl.’s Mot. 8 [#54]. The court finds no basis for the requested relief. Plaintiff explains his understanding that, under Rule 60(c)(1), such a motion must be filed no more than one year after the entry of judgment or order. Id. Rule 60(c)(1) provides, however, that a Rule 60(b) motion “must be made within a reasonable time” and sets a one-year limit only for motions brought under Rule 60(b)(1), (2), and (3). Accordingly, if a motion is brought for a “reason that justifies relief” under Rule 60(b)(6), such motion must be filed “within a reasonable time.” Whether such a motion would be found to be justified or timely will depend on the circumstances. In any event, since the dismissal for failure to pay the filing fee is without prejudice, the judgment here will not bar a subsequent action if circumstances change.

Accordingly,

(1) this action is dismissed without prejudice for failing to pay the required filing fees,

and

(2) Plaintiff’s Fed. R. Civ. P. Rule 59(e) motion is DENIED.

SO ORDERED.

/s/ Indira Talwani
Indira Talwani
United States District Judge