

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

L. T. TUCKER, JR.,

Plaintiff,

v.

CASE NO. 2:09-CV-13247
HONORABLE AVERN COHN

NICK LUDWICK, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION
AND/OR FOR RELIEF FROM JUDGMENT**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. The Court denied Plaintiff's application to proceed without prepayment of fees and costs and dismissed his complaint without prejudice pursuant to the "three strikes" provision of 28 U.S.C. § 1915(g). See Order filed August 26, 2009.

Before the Court is plaintiff's motion for reconsideration and/or for relief from judgment. For the reasons that follow, the motion is DENIED.

II.

First, to the extent that Plaintiff seeks reconsideration of the Court's decision, his motion must be denied. A motion for reconsideration must be filed within 10 days after entry of the court's judgment or order. See Local Rule 7.1(g)(1). Plaintiff's proof of service for his motion is dated September 21, 2009 – 26 days after the court's judgment. His motion for reconsideration is therefore untimely and may be denied on this ground.

Moreover, plaintiff's motion fails to satisfy the requirements for reconsideration. He has not shown a palpable defect by which the Court has been misled show or that a different disposition must result from a correction thereof, as required by Local Rule 7.1(g)(3).

Finally, even if the motion was considered to have been brought within a reasonable time under Rule 60(b), he is not entitled to relief. Under Rule 60(b), a district court will grant relief from a final judgment or order only upon a showing of one of the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

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

Plaintiff has made no such showing. The Court properly dismissed the case without prejudice because plaintiff did not establish that he is under imminent danger of serious physical injury so as to fall within the exception to the three strikes rule.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: September 25, 2009

I hereby certify that a copy of the foregoing document was mailed to L.T. Tucker, Jr. #132271, St. Louis Correctional Facility, 8585 N. Croswell Road, St. Louis, MI 48880 and the attorneys of record on this date, September 25, 2009, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager, (313) 234-5160