UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID KENDALE LAMB,

Plaintiff,

v.

CASE NO. 2:09-CV-15003
HONORABLE PAUL D. BORMAN

WAYNE CO. PROSECUTOR,

Defendant.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR NEW ACTION

Michigan prisoner David Kendale Lamb ("Plaintiff") filed a pro se civil rights complaint and request for declaratory judgment pursuant to 42 U.S.C. § 1983 in which he contested certain evidence from his state criminal trial and sought re-testing of gunshot residue from his pants and DNA testing of hairs recovered from baseball caps at the crime scene. The Court summarily dismissed the complaint pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim upon which relief may be granted. The Court also denied Plaintiff's motion to re-file his complaint and proceed on an amended complaint.

This matter is now before the Court on Plaintiff's "Motion for New Action Pursuant to 42 U.S.C. § 1983" brought under Federal Rule of Civil Procedure 60(b)(6). Plaintiff essentially seeks to proceed on new claims challenging the state court process for reviewing his evidentiary issues. Plaintiff is not entitled to the relief he seeks. The Court properly dismissed his complaint for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983. Should Plaintiff wish to

bring new allegations that the state court process (undertaken after the dismissal of his initial federal civil rights action) was ineffective, he must file a new complaint along with either the $350.00 filing fee or an application to proceed without prepayment of the filing fee. Plaintiff's motion for new action is therefore **DENIED**. This case remains closed.

IT IS SO ORDERED.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

DATED: 10-26-12