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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

OSCAR WILLIAMS, JR.,
Plaintiff,
v.
ALFRED HANKE , et al.,
Defendants.

Case No. 2:09-CV-01979-KJD-GWF

ORDER

Currently before the Court is Plaintiff’s Motion for Relief From Order (#34), brought pursuant to Fed. R. Civ. P. 60(b)(1) and (6) (#39). Defendant Steven R. Turner (“Turner”) filed a Response in Opposition (#40). Specifically, Plaintiff seeks relief from the Court’s Judgment of March 9, 2011, which dismissed Plaintiff’s second cause of action pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted.

I. Background

Plaintiff Oscar Williams, Jr. filed his First Amended Complaint (#16) on May 7, 2010, alleging three claims for relief pursuant to 42 U.S.C. § 1983, against Warden William Donat (“Donat”), and correctional officers Alfred Hanke (“Hanke”), and Steve Turner, regarding an incident wherein Plaintiff’s pinkie finger was injured while incarcerated. Defendant Turner, on July 30, 2010, subsequently filed a Motion to Dismiss Plaintiff’s second cause of action, which alleged violations of the Fourteenth Amendment and Articles 1 and 8 of the Nevada Constitution solely against Defendant Turner (#19). On March 9, 2011, the Court granted Defendant Turner’s Motion to Dismiss the Plaintiff’s second cause of action because the Plaintiff failed to state a due process

1 violation against Defendant Turner (#34). Plaintiff, on March 18, 2011, then filed a Motion for
2 Relief From Order (#34), pursuant to Rule 60(b)(1) and (6), alleging that the Court used incorrect
3 legal analysis in assessing the Plaintiff's due process claims against Defendant Turner (#39).

4 **II. Standard of Law for Motion for Relief From Order**

5 Rule 60 of the Federal Rules of Civil Procedure provides a means for a party seeking relief
6 from a judgment or order. According to Rule 60(b), a party may submit a motion for the court to
7 relieve the party, or a party's legal representative "from a final judgment, order, or proceeding for the
8 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other
9 reason that justifies relief." Fed. R. Civ. P. 60(b)(1),(6).

10 **III. Discussion**

11 Here, the Court's Order (#34) granting Defendant Turner's Motion to Dismiss (#19) did not
12 entirely dispose of the Plaintiff's action. The Order (#34) only dismissed count two of Plaintiff's
13 First Amended Complaint (#16) and did not affect counts one and three of the same Complaint
14 against Defendant's Hanke and Donat. Rule 60(b) only applies when filed against a final judgment;
15 therefore, the Plaintiff is mistaken in the rule's application.

16 Accordingly, since said Order is not a final judgment, order, or proceeding as required for
17 relief under Rule 60(b), the Court finds that Plaintiff's Motion for Relief From Order should be
18 denied.

19 **IV. Conclusion**

20 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Relief From Order (#39) is
21 **DENIED.**

22 DATED this 31st day of May 2011.

23 

24 _____
25 Kent J. Dawson
26 United States District Judge