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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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| ENOMA IGBINOVIA, |) | 3:11-cv-00079-ECR-WGC |
| |) | |
| Plaintiff, |) | <u>Order</u> |
| |) | |
| vs. |) | |
| |) | |
| JAMES G. COX, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

This is a pro se prisoner civil rights action filed pursuant to 42 U.S.C. § 1983.

I. Background

On December 29, 2011, the Magistrate Judge issued a Report and Recommendation (#46) recommending that Defendants' motion for summary judgment (#15) be granted with respect to Plaintiff's Fourteenth Amendment procedural due process claim and denied with respect to Plaintiff's First Amendment access to courts claim. The Magistrate Judge also recommended that Plaintiff's motion for summary judgment (#26) be denied. On February 10, 2012, after performing a *de novo* review of Plaintiff's claims, we agreed with the Magistrate Judge and issued an Order (#50) approving and adopting the Report and Recommendation (#46). We found that Plaintiff was afforded all necessary due process with regard to his classification as a High Risk

1 Potential (HRP) inmate, including notice, a full classification
2 hearing, and numerous classification reviews since being placed in
3 administrative segregation.

4 On February 23, 2012, Plaintiff filed a motion to alter or amend
5 (#55) the Court's previous Order (#50) pursuant to Federal Rule of
6 Civil Procedure 59(e) which the Court will also treat as a motion for
7 relief from an order pursuant to Rule 60(b), as the Court has not yet
8 entered a final judgment in this case. Defendants responded (#57) on
9 February 28, 2012. Plaintiff did not reply.

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II. Legal Standard

12 Federal Rule of Civil Procedure 59(e) provides that "[a] motion
13 to alter or amend a judgment must be filed not later than 28 days
14 after the entry of judgment." "A district court has considerable
15 discretion when considering a motion to amend a judgment under Rule
16 59(e)." Turner v. Burlington N. Santa Fe R. Co., 338 F.3d 1058, 1063
17 (9th Cir. 2003) (citations omitted). Further, the Ninth Circuit has
18 held that a Rule 59(e) motion should not be granted absent "highly
19 unusual circumstances, unless the district court is presented with
20 newly discovered evidence, committed clear error, or if there is an
21 intervening change in the controlling law." Herbst v. Cook, 260 F.3d
22 1039, 1044 (9th Cir. 2001) (quoting McDowell v. Calderon, 197 F.3d
23 1253, 1255 (9th Cir. 1999) (en banc)). Thus there are four grounds
24 upon which a Rule 59(e) motion may be granted: (1) the motion is
25 necessary to correct manifest errors of law or fact upon which the
26 judgment is based; (2) the moving party presents newly discovered o

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1 previously unavailable evidence; (3) the motion is necessary to
2 prevent manifest injustice; or (4) there is an intervening change in
3 controlling law. Turner, 338 F.3d at 1063 (quoting McDowell, 197 F.3d
4 at 1254 n.1).

5 Under Rule 60(b), the court may relieve a party from an order for
6 the following reasons:

- 7 (1) mistake, inadvertence, surprise, or excusable neglect;
- 8 (2) newly discovered evidence that, with reasonable
diligence, could not have been discovered in time to
move for a new trial under Rule 59(b);
- 9 (3) fraud (whether previously called intrinsic or
10 extrinsic), misrepresentation, or misconduct by an
opposing party;
- 11 (4) the judgment is void;
- 12 (5) the judgment has been satisfied, released or
discharged; it is based on an earlier judgment that has
13 been reversed or vacated or applying it prospectively
is no longer equitable; or
- (6) any other reason that justifies relief.

14 Motions to reconsider are generally left to the discretion of the
15 trial court. Downing v. Nevada, No. 2:11-cv-02024, 2012 WL 1298330,
16 at *1 (D.Nev. Apr. 13, 2012) (citing Combs v. Nick Garin Trucking, 825
17 F.2d 437, 441 (D.C. Cir. 1987)). A motion for reconsideration must
18 set forth factors or law of a strongly convincing nature to persuade
19 the court to reverse its prior decision. Frasure v. U.S., 256
20 F.Supp.2d 1180, 1183 (D.Nev. 2003) (citing All Haw. Tours Corp. v.
21 Polynesian Cultural Ctr., 116 F.R.D. 645, 648-49 (D.Haw. 1987), *rev'd*
22 *on other grounds*, 855 F.2d 860 (1988)).

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III. Discussion

25 In his motion to amend or alter the judgment (#55), Plaintiff
26 asserts that Defendants failed to meet their burden of proving that he

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1 should have been placed on HRP status. Plaintiff, however, has
2 already brought this argument before the Court and the Court found it
3 without merit. Defendants produced evidence showing that Plaintiff
4 was afforded ample due process with regard to his HRP designation, as
5 detailed exhaustively by the Magistrate Judge in the Report and
6 Recommendation (#46). Plaintiff has not identified any mistake,
7 intervening change in controlling law, newly discovered evidence,
8 fraud, or any other reason justifying relief under either Rule 59(e)
9 or 60(b). A motion for reconsideration is a not a vehicle to reargue
10 a previous motion, and a party seeking reconsideration must show more
11 than a disagreement with the Court's prior decision. U.S. Westlands
12 v. Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001) (citations
13 omitted). Because Plaintiff has failed to set forth any valid reason
14 for reversing the Court's prior decision, Plaintiff's motion must be
15 denied.

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17 **IV. Conclusion**

18 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's motion to alter
19 or amend (#55) is **DENIED**.

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22 DATED: May 14, 2012.

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25 UNITED STATES DISTRICT JUDGE