

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANGEL HERNANDEZ,

Plaintiff,

- against -

COMMISSIONER DORA SCHIRRO, WARDEN
LUIS RIVERA, and SUPERINTENDENT at C-
74-C-73,

Defendant.

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MEMORANDUM
DECISION AND ORDER

14 Civ. 4538 (BMC)

COGAN, District Judge.

By Order dated September 15, 2014 and Judgment dated September 16, 2014, the Court dismissed this action on the ground that plaintiff had no standing to pursue it. The complaint had alleged that by forcing plaintiff to pass through a metal scanner at Rikers Island, defendants had injured plaintiff by causing him to “worry[] that I am going to be affected by radiation sooner or later.” The Court held that this speculative possibility of future injury did not constitute an injury in fact sufficient to confer standing.

Plaintiff has now filed an “affirmation in opposition to motion,” which the Court construes as a motion to vacate the Judgment pursuant to Federal Rule of Civil Procedure 60(b), in which he states that he has

medical documents that state I had rashes [and] skin disorders that might have been caused by the effects too much radiation. ...

[I]t is a proven fact that you can have skin disorders such as rashes/burns which lead to [unintelligible] skin infection ... I think or I should say I know that I caught rashes/skin disorder because of too much radiation which is cruel and unusual punishment.

... Also I went through depression and anxiety maybe it was also side effect from the radiation.

The only additional facts alleged in this affirmation as compared to the original complaint are (1) plaintiff has medical records showing that he has rashes or skin disorders; and (2) plaintiff believes he has depression. It remains entirely speculative that these conditions were “fairly traceable” to radiation, or that plaintiff is suffering injury by having been subjected to the Rikers Island scanner. That speculation leaves plaintiff’s claim insufficient to confer standing.

Accordingly, plaintiff’s motion for reconsideration is denied. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal.

SO ORDERED.

Digitally signed by Brian M. Cogan

U.S.D.J.

Dated: Brooklyn, New York
September 30, 2014