

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WAMAL ALLAH,

Plaintiff,

-against-

NANCY WEIN,

Defendant.

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NICHOLAS G. GARAUFGIS, United States District Judge.

ORDER

01-CV-6302 (NGG) (LB)

The court has received pro se Plaintiff Wamal Allah’s motion to set aside judgment pursuant to Federal Rule of Civil Procedure 60(b). (Mot. to Set Aside J. (“Mot.”) (Dkt. 135).) Plaintiff seeks relief from a January 26, 2005 Memorandum and Order (the “M&O”) dismissing his lawsuit, which asserted claims against employees of the Arthur Kill Correctional Facility and the Department of Corrections—including Defendant Nancy Wein—under 42 U.S.C. §§ 1983, 1985, and 1986. (See Jan. 26, 2005 Mem. & Order (“M&O”) (Dkt. 123).)

In the M&O, this court granted Wein’s motion for a judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) because she was entitled to qualified immunity. (M&O at 5.) Although the court agreed that Plaintiff’s alleged refusal to become a jailhouse informant was protected by the First Amendment, it found that this right was not clearly established because there was no applicable United States Supreme Court or Second Circuit precedent. (Id. at 5-6.)

Plaintiff now claims that the M&O should be vacated because a recent Second Circuit decision clearly establishes that prisoners do possess a First Amendment right not to serve as prison informants. (Mot. at 2 (citing Burns v. Martuscello, 890 F.3d 77 (2d Cir. 2018)).) However, this right was not clearly established in 2000, when the alleged violation occurred (see

M&O at 5-7). The Second Circuit decision does not, therefore, alter this court's conclusion that Wein is entitled to qualified immunity from Plaintiff's civil claims.

For the foregoing reasons, Plaintiff's motion to set aside judgment (Dkt. 135) is DENIED. The Clerk of Court is respectfully DIRECTED to send a copy of this order by certified mail, return receipt requested, to pro se Plaintiff at his address of record.

SO ORDERED.

Dated: Brooklyn, New York
July 5, 2019

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge