

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:03-cv-409-GCM**

THIS MATTER is before the Court on consideration of a motion filed by Plaintiff pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure. (Doc. No. 12).

On August 18, 2004, this Court dismissed Plaintiff's complaint, filed pursuant to 42 U.S.C. § 1983, after finding that the allegations contained within the complaint failed to state a claim for relief. Plaintiff did not file an appeal, and the findings and conclusions from this Order are incorporated by reference. (Doc. No. 7). On July 15, 2011, Plaintiff filed a Rule 60(b) motion contending that the Court's Order of dismissal was void due based on Plaintiff's allegations that the Court committed fraud and misrepresentation. Without addressing Plaintiff's unsupported allegations, the Court denied the motion after concluding that it was untimely and that it was patently unreasonable to wait some seven years following dismissal to seek relief from the Order. (Doc. No. 11 at 2-3). Plaintiff did not appeal from the Court's Order denying relief and those findings and conclusions are again incorporated herein by reference.

On August 30, 2013, over nine years removed from the dismissal of his § 1983

complaint, Plaintiff again returns to this Court seeking relief from the Order of dismissal as being void under Rule 60(b)(4). Plaintiff renews his conclusory allegations that this Court engaged in fraud and/or misrepresentation. To wit, Plaintiff contends that the undersigned was persuaded “to act and adopt findings” by one or more defendants in reaching the decision to dismiss his complaint.

The Court finds that Plaintiff’s arguments are both untimely and frivolous and his Rule 60(b)(4) motion will be dismissed. To the extent Plaintiff seeks to renew his failed attack on the defendants based on their alleged conduct in his criminal proceeding, the Court finds that these issues have already been decided against him and Plaintiff did not challenge these findings or the conclusion of law on appeal. Accordingly, Plaintiff is foreclosed from re-litigating these claims anew. For the reasons stated herein, Plaintiff’s Rule 60(b)(4) motion is DENIED.

IT IS, THEREFORE, ORDERED that Plaintiff’s motion for relief under Rule 60(b)(4) of the Federal Rules of Civil Procedure is **DENIED**. (Doc. No. 12).

Signed: September 4, 2013



Graham C. Mullen
United States District Judge