UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GREGORY TYREE BROWN,

Plaintiff,

v.

RICHARD L MORGAN,

Defendant.

CASE NO. C16-5975 BHS

ORDER

THIS MATTER is before the Court on magistrate Judge Fricke's Report and Recommendation (R&R), Dkt. 101, recommending the Court deny pro se plaintiff Gregory Tyree Brown's Motion for Relief from Judgment, Dkt. 92, and his Motion to Amend his complaint, Dkt. 95, as moot. Brown objects. Dkt. 106.

In April 2020, over the defendants' objection, this Court adopted the Magistrate Judge's prior R&R, Dkt. 87, and ordered Brown to file a third amended complaint within 21 days. Dkt. 89. He did not do so. In July 2020, the Court dismissed Brown's claims. Dkt. 90.

In November 2021, Brown moved to vacate the Court's judgment, Dkt. 92, and to amend his complaint, Dkt. 95. He alleges that his failure to timely respond to the Court's

prior Order was caused by the misconduct of a non-party, the Walla Walla State Penitentiary law librarian, Vanetta Jackson.

The R&R correctly explains that, under Rule 60(b), the Court may relieve a party from a final judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (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); (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Motions for relief from judgment are typically committed to the "sound discretion of the district court." *Exp. Grp. v. Reef Indus., Inc.*, 54 F.3d 1466, 1469 (9th Cir. 1995).

The R&R concluded that Brown had not raised a claim of neglect under Rule 60(b)(1), because he was alleging misconduct by another. It also concluded that Brown's claim did not fall under Rule 60(b)'s subsections (2), (4), or (5), because Brown was not asserting newly discovered evidence, that the judgment was void, or that the judgment had been released. And it concluded that his claim for relief under Rule 60(b)(3) was misplaced, because the misconduct upon which he relies was not committed by "an opposing party." Dkt. 101 at 4.The law librarian, and the unnamed people who "stole" some of his legal papers, are not parties to this action.

Finally, the R&R concluded that Rule 60(b)'s "catch all" provision, subsection (6), did not apply to excuse Brown's 16-month delay, because he could not show

"exceptional circumstances" that either injured him or were beyond his control. Brown's assertions that he "called the Clerk's office 12 times" and sent letters[1] to the Court inquiring about his case were and are without factual support. The R&R concluded that Brown's motion was not filed within a reasonable time under Rule 60(c)(1). The R&R recommends denying Brown's motions. Dkt. 101 at 4.

A district judge must determine de novo any part of the magistrate judge's disposition to which a party has properly objected. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3). A proper objection requires specific written objections to the findings and recommendations in the R&R. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Nevertheless, objections to a Magistrate's Report and Recommendation are not an appropriate vehicle to rehash or re-litigate the points considered and resolved by the Magistrate Judge. *See, e.g.*, *El Papel LLC v. Inslee*, No. 20-cv-01323 RAJ-JRC, 2021 WL 71678, at *2 (W.D. Wash. Jan. 8, 2021) ("Because the Court finds that nearly all objections are merely a rehash of arguments already raised and decided upon by the Magistrate Judge, the Court will not address each objection here."); *Aslanyan v. Herzog*, No. 14-cv-0511 JLR, 2014 WL 7272437, at *1 (W.D. Wash. Dec. 17, 2014) (rejecting a

[1] Brown claims he called the Court Clerk's Office 12 times between August 2019 and July 2021, seeking information about the status of this case. He claims that the Clerk's office refused or rejected each of those calls, for reasons he does not explain. That is not the Court's practice. Brown's follow-on claim that he sent the Court five letters seeking the same information is not credible, the Clerk's Office has received no such letters. Brown effectively argues that the clerk's office is part of a conspiracy to deprive him of his legal papers. It is not.

challenge to a Magistrate's Report and Recommendations when "all of [plaintiff's] objections simply rehash arguments contained in his amended opening memorandum or in his reply memorandum"). As Courts in other Districts have recognized and explained, such re-litigation is not an efficient use of judicial resources.

There is no benefit to the judiciary "if the district court[] is required to review the entire matter *de novo* because the objecting party merely repeats the arguments rejected by the magistrate. In such situations, this Court follows other courts that have overruled the objections without analysis." *Hagberg v. Astrue*, No. CV-09-01-BLG-RFC-CSO, 2009 WL 3386595, at *1 (D. Mont. Oct. 14, 2009). In short, an objection to a magistrate's findings and recommendations "is not a vehicle for the losing party to relitigate its case." *Id*.; *see also Conner v. Kirkegard*, No. CV 15-81-H-DLC-JTJ, 2018 WL 830142, at *1 (D. Mont. Feb. 12, 2018); *Fix v. Hartford Life & Accident Ins. Co.*, CV 16-41-M-DLC-JCL, 2017 WL 2721168, at *1 (D. Mont. June 23, 2017) (collecting cases); *Eagleman v. Shinn*, No. CV-18-2708-PHX-RM (DTF), 2019 WL 7019414, at *4 (D. Ariz. Dec. 20, 2019) ("[O]bjections that merely repeat or rehash claims asserted in the Petition, which the magistrate judge has already addressed in the R&R, are not sufficient under Fed. R. Civ. P. 72.").

Many of Brown's arguments re-hash arguments he has made before. Brown also argues that the denial of his motion under Rule 60(b) would be an abuse of discretion, because the dismissal of his claims was itself an abuse of discretion. Dkt. 106 at 4. He asks the Court to measure the timeliness of his response not against the Rule 60 standard described above, but against the five-factor test he claims courts apply when evaluating

whether to dismiss a plaintiff's claim as a sanction for failure to comply with a court order. *Id*. (citing *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)).

The Court did not dismiss Brown's claim as a sanction for failing to comply with a court order; it offered him yet another opportunity to state a plausible claim in the form of a third amended complaint. He did not take advantage of that opportunity. His claim that the defendants would not be prejudiced if the Court were to re-open the case is not relevant. And it is not accurate; as the State points out, the claims he seeks to assert are based in part on conduct that occurred eleven years ago. *See* Dkt. 108 at 3.

Brown has not met his burden to show exceptional circumstances under Rule 60(b)(6), and his attempt to re-open this case 16 months after it was dismissed and closed is not reasonable. The R&R, Dkt. 101, is ADOPTED. Brown's Motion for Relief from Judgment under Rule 60, Dkt. 92, is DENIED. His Motion to Amend, Dkt. 95, is DENIED as moot.

The matter remains closed.

IT IS SO ORDERED.

Dated this 11th day of October, 2022.

BENJAMIN H. SETTLE
United States District Judge