

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TERRANCE EDWARDS,

Plaintiff,

v.

ORDER

08-cv-352-bbc

JEREMY STANIEC, JOE BEAHM,
TRAVIS CAUL, J. HAWKINS, Sgt.
ERIC KRUEGER, and
BRIAN GREFF, Lt.

Defendants.

Judgment was entered in this case on May 12, 2009, after I granted defendants' motion for summary judgment on plaintiff's excessive force claim. Plaintiff has filed a motion entitled "Motion to Recall and Reconsider" and a separate "Supplement to Recall and Reconsideration Motion." In his motion and supplement, plaintiff argues that it was error to disregard his version of the incident. Among other things, plaintiff notes that, although his proposed findings of fact cited only an unsworn excerpt of his complaint that was attached to his summary judgment materials, his original complaint *was* sworn.

Before I consider the merits of his argument, I must determine the date he filed his motion for reconsideration, which is properly construed as a motion to alter or amend the

judgment under Fed. R. Civ. P. 59. A Rule 59 motion is considered “filed” at the moment it is delivered to prison authorities. Edwards v. United States, 266 F.3d 756, 758 (7th Cir. 2001) (citing Houston v. Lack, 487 U.S. 266 (1988)). Because I may entertain his Rule 59 motion only if it is timely, plaintiff may have until June 18, 2009 in which to file an affidavit or a declaration sworn to under penalty of perjury indicating the date that he submitted his “Motion to Recall and Reconsider” to prison officials to be mailed.

ORDER

IT IS ORDERED that plaintiff may have until June 18, 2009 in which to file an affidavit or a declaration sworn to under penalty of perjury indicating the date that he submitted his “Motion to Recall and Reconsider” to prison officials to be mailed. If he fails to file an affidavit or declaration by that time, his “Motion to Recall and Reconsider” will be considered withdrawn.

Entered this 5th day of June, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge