

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
GEORGIA, MACON DIVISION

Walter Lawrence Kenney v. Officer Kitchens

Kenney · No. 5:23-CV-509 (MTT) · Decided March 3, 2026

SUMMARY

The court denied Walter Lawrence Kenney’s motion for reconsideration of the order adopting a recommendation to grant the defendant judgment on the pleadings for failure to exhaust administrative remedies under the Prison Litigation Reform Act. The court also denied Kenney’s motion for appointment of counsel, finding no exceptional circumstances because judgment had already been entered and no complex legal issues remained.

CASE DETAILS

COURT	United States District Court for the Middle District of Georgia, Macon Division
WRITING FOR THE COURT	Marc T. Treadwell
JURISDICTION	United States District Court for the Middle District of Georgia, Macon Division
DECIDED	March 3, 2026
DOCKET	5:23-CV-509 (MTT)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for reconsideration of an order adopting a magistrate judge's recommendation granting the defendant's motion for judgment on the pleadings, and separately moved for appointment of counsel. The district court denied both motions.
STANDARD OF REVIEW	A motion for reconsideration is evaluated under the extraordinary-remedy standard in Local Rule 7.6: intervening change in law, newly discovered evidence unavailable through due diligence, or clear error of law. The court reviewed the magistrate judge's recommendation de novo after vacating its prior clear-error review.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

motion for reconsideration

prisoners rights

section 1983

motion for judgment on the pleadings

civil procedure

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

constitutional law

QUESTIONS PRESENTED

1. Whether Kenney demonstrated an intervening change in law, newly discovered evidence, or clear error warranting reconsideration of the court's December 19, 2025 order.
2. Whether allegations of unconstitutional or inhumane prison conditions could overcome Kenney's failure to exhaust administrative remedies under the Prison Litigation Reform Act.
3. Whether exceptional circumstances warranted appointment of counsel in the § 1983 action after judgment had been entered.

HOLDINGS

1. Reconsideration was not warranted because the November 26, 2025 order Kenney sought to challenge had been vacated, and he did not demonstrate an intervening change in law, newly discovered evidence, or clear error of law as to the December 19, 2025 order.
2. Allegations concerning inhumane prison conditions, including newly alleged discrimination, could not overcome Kenney's failure to exhaust available administrative remedies before bringing the § 1983 action.
3. Appointment of counsel was not warranted because there is no absolute constitutional right to counsel in a § 1983 action, and no exceptional circumstances existed where judgment had already been entered and no complex legal issues remained.

KEY QUOTATIONS

“reconsideration of a previous order is an extraordinary remedy to be employed sparingly.” (ECF 56 at 1-4)

“No action shall be brought with respect to prison conditions under section 1983 of this title ... by a prisoner confined in any jail, prison, or correctional facility until such administrative remedies as are available are exhausted.” (ECF 56 at 2-4)

“There is, however, “no absolute constitutional right to the appointment of counsel” in a § 1983 lawsuit.” (ECF 58)

FACTUAL BACKGROUND

Kenney, a prisoner proceeding under 42 U.S.C. § 1983, alleged that he was subject to inhumane prison conditions and later alleged discrimination. The court determined that he had failed to exhaust available administrative remedies before filing suit, and judgment had already been entered against him when he sought reconsideration and appointment of counsel.

PROCEDURAL HISTORY

Magistrate Judge Charles H. Weigle recommended granting the defendant's motion for judgment on the pleadings because Kenney had failed to exhaust administrative remedies. The district court initially adopted the recommendation after clear-error review, later vacated that order after receiving Kenney's timely objection, conducted de novo review, and again adopted the recommendation and reentered judgment on December 19, 2025. The court then denied Kenney's motion for reconsideration and motion to appoint counsel.

DISPOSITION

other

CASES CITED

- Williams v. McNeil, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009)
- Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001)
- Bingham v. Nelson, 2010 WL 339806, at *1 (M.D. Ga. Jan. 21, 2010)
- McCoy v. Macon Water Authority, 966 F. Supp. 1209, 1222-23 (M.D. Ga. 1997)
- Poole v. Lambert, 819 F.2d 1025, 1028 (11th Cir. 1987) (per curiam)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION WALTER LAWRENCE KENNEY,))) Plaintiff,)) v.) CIVIL ACTION
NO. 5:23-CV-509 (MTT)) Officer KITCHENS,))) Defendant.)) ORDER On October 24, 2025,
Magistrate Judge Charles H. Weigle recommended granting the Defendant's motion for judgment on the pleadings because Plaintiff Walter Lawrence Kenney failed to exhaust his administrative remedies before filing this lawsuit.

ECF 48. The Court has twice reviewed the Magistrate Judge's Recommendation. First, on November 26, 2025, receiving no objection, the Court reviewed the Recommendation for clear error and adopted it. ECF 50. However, after judgment was entered, the Court received a motion for an extension and an objection from Kenney, both of which were dated before the Court's November 26, 2025 order.¹ ECF 51; 52.

Thus, the Court vacated its prior order and conducted a second review of the Recommendation using a de novo standard of review. ECF 54. The Court again adopted the Recommendation on December 19, 2025. Id. Judgment was reentered that 1 Under the 'prison mailbox rule,' a pro se prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." Williams v. McNeil, 557 F.3d 1287, 1290 n.2 (11th Cir.

2009). "Absent evidence to the contrary," courts must "assume that [the prisoner's filing] was delivered to prison authorities the day he signed it." Washington v. United States, 243 F.3d 1299,

1301 (11th Cir. 2001). same day. ECF 55.

On December 22, 2025, Kenney moved for reconsideration. ECF 56. On February 13, 2026, Kenney moved for the appointment of counsel. ECF 58. For the following reasons, Kenney's motion for reconsideration (ECF 56) and his motion to appoint counsel (ECF 58) are DENIED.

I. MOTION FOR RECONSIDERATION Pursuant to Local Rule 7.6, "Motions for Reconsideration shall not be filed as a matter of routine practice." M.D. Ga. L.R. 7.6. Indeed, "reconsideration of a previous order is an extraordinary remedy to be employed sparingly." *Bingham v. Nelson*, 2010 WL 339806 at *1 (M.D. Ga. Jan. 21, 2010) (internal quotation marks and citation omitted).

It "is appropriate only if the movant demonstrates (1) that there has been an intervening change in the law, (2) that new evidence has been discovered which was not previously available to the parties in the exercise of due diligence, or (3) that the court made a clear error of law." *Id.* "In order to demonstrate clear error, the party moving for reconsideration must do more than simply restate his prior arguments, and any arguments which the party inadvertently failed to raise earlier are deemed waived." *McCoy v. Macon Water Authority*, 966 F. Supp. 1209, 1222-23 (M.D.

Ga. 1997). First, Kenney's motion for reconsideration is moot. Kenney requests reconsideration of the Court's November 26, 2025 order adopting the Recommendation entered. ECF 56 at 1. But that order was vacated on December 19, 2025, after the Court received Kenney's objection.² ECF 54.

To the extent Kenney's arguments for reconsideration are relevant to the Court's December 19, 2025 order, Kenney has failed to demonstrate a change in the law, the 2 Kenney's motion for reconsideration is dated December 10, 2025 and, thus, was filed before the Court vacated its first order adopting the Recommendation. ECF 56 at 4. discovery of new evidence, or a clear error of law.

Kenney argues that the Prison Litigation Reform Act's ("PLRA") exhaustion requirement is unconstitutional, that the PLRA's exhaustion requirement does not apply to him, and that he is subject to inhumane conditions in prison. ECF 56 at 2-4.

The Court has already addressed Kenney's arguments that the PLRA's exhaustion requirements are unconstitutional and that they do not apply to him. See ECF 54 at 2, n.3. Not only are those arguments meritless, but they are not properly re-raised in a motion for reconsideration. *McCoy*, 966 F. Supp. at 1222-23.

Moreover, Kenney's allegations of inhumane conditions, including newly alleged discrimination, cannot overcome his failure to exhaust. See 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title ... by a prisoner confined in any

jail, prison, or correctional facility until such administrative remedies as are available are exhausted.”).

Accordingly, Kenny’s motion for reconsideration (ECF 56) is DENIED. II. MOTION TO APPOINT COUNSEL Next, Kenney moves for the appointment of counsel. ECF 58. A district court “may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). There is, however, “no absolute constitutional right to the appointment of counsel” in a § 1983 lawsuit.

Poole v. Lambert, 819 F.2d 1025, 1028 (11th Cir. 1987) (per curiam). Appointment of counsel is “instead a privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner.” Id. Here, Judgment has already been entered, and no complex legal issues remain.

Thus, exceptional circumstances for the appointment of counsel do not exist. Accordingly, Kenney’s motion to appoint counsel (ECF 58) is DENIED. SO ORDERED, this 3rd day of March, 2026. S/ Marc T. Treadwell MARC T. TREADWELL, JUDGE UNITED STATES DISTRICT COURT