

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Holmes v. Cardoza

Holmes · No. 2:24-cv-2190-WBS-JDP (P) · Decided April 24, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends denying plaintiff Dominique Holmes’s motion to reopen her closed 42 U.S.C. § 1983 action under Federal Rule of Civil Procedure 60(b). The court concludes that plaintiff has not shown newly discovered evidence, clear error, fraud, misconduct, or another basis for relief from the prior dismissal for failure to pay the filing fee and failure to prosecute.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 DOMINIQUE HOLMES, Case No. 2:24-cv-2190-WBS-JDP (P) 12
Plaintiff, 13 v. FINDINGS AND RECOMMENDATIONS 14 N. CARDOZA, et al., 15
Defendants. 16 17 18 Plaintiff is a state inmate proceeding pro se in this closed 42 U.S.C. § 1983
civil rights 19 action, in which she alleged defendants violated her Eighth and Fourteenth
Amendment rights to 20 adequate health care and to be free from cruel and unusual punishment.

ECF No. 1. In her 21 complaint, she listed her address as Stanton Correctional Facility’s P.O. Box.
Id. at 1. Two 22 months after plaintiff filed her complaint, I ordered plaintiff to show cause why
the case should 23 not be dismissed for failure to pay the filing fee, failure to prosecute, and
failure to comply with 24 court orders. ECF No. 5. 25 Plaintiff did not respond, causing me to
recommend that the action be dismissed.

ECF 26 No. 6 at 1. I acknowledged that it appeared from the docket that the order to show cause
was 27 returned as undeliverable, but I explained that plaintiff was properly served under local
rules. Id. 28 1 at 1 n.1. I also noted that it was plaintiff’s responsibility to keep the court apprised
of her current 2 address. Id. As such, I recommended that plaintiff’s action be dismissed for failure
to pay the 3 filing fee, failure to prosecute, and failure to comply with court orders.

Id. at 3. 4 With no objections from plaintiff, in November 2024, the district court adopted my 5
findings and recommendations, dismissing the action for failure to pay the filing fee and for 6
failure to prosecute. ECF No. 7. 7 Three months later, in February 2025, plaintiff filed the instant
motion to reopen the case. 8 ECF No. 11. She acknowledges that her case had been closed
because her mail was not being 9 delivered to her, and she contends that it was not her fault she
did not receive mail, speculating 10 that prison staff were purposefully not delivering mail to her.

Id. Notably, she is still housed at 11 Stanton Correctional Facility, id., but the docket now reflects the physical address of the facility 12 instead of a P.O. Box. Having considered the record and applicable law, I recommend that 13 plaintiff's motion to reopen be denied. 14 Under Rule 60(b), the court may grant reconsideration of a final judgment and any order 15 based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence 16 which, with reasonable diligence, could not have been discovered within ten days of entry of 17 judgment; and (3) fraud, misrepresentation, or misconduct of an opposing party.

See Fed. R. Civ. P. 60(b)(1)-(3). A motion for reconsideration on any of these grounds must be brought within 19 one year of entry of judgment or the order being challenged. See Fed. R. Civ. P. 60(c)(1). Under 20 Rule 60(b), the court may also grant reconsideration if: (1) the judgment is void; (2) the 21 judgement has been satisfied, released, or discharged, an earlier judgment has been reversed or 22 vacated, or applying the judgment prospectively is no longer equitable; and (3) any other reason 23 that justifies relief.

See Fed. R. Civ. P. 60(b)(4)-(6). A motion for reconsideration on any of 24 these grounds must be brought "within a reasonable time." Fed. R. Civ. P. 60(c)(1). 25 Plaintiff has not identified any authority providing a basis for reopening this case, and I 26 find no basis to do so. Her motion fails to present newly discovered evidence that would change 27 the outcome of the court's ruling, fails to show that the court committed clear error, and fails to 28 establish fraud, misrepresentation, or misconduct of either the opposing party or of this court.

1 | The interests of finality and the conservation of judicial resources also do not warrant the use of 2 | the extraordinary remedy plaintiff seeks. See *United States v. Alpine Land & Reservoir Co.*, 984 3 | F.2d 1047, 1049 (9th Cir. 1993). 4 Additionally, although it appears that plaintiff may have provided the court with an 5 | improper address, which may have resulted in the order recommending case closure being 6 | returned to the court, it is plaintiff's responsibility to provide a proper address.

See Local Rule 7 | 183(b). Accordingly, plaintiff has failed to establish any basis for relief under Rule 60(b) from 8 | the court's dismissal order and judgment, and I recommend that her motion be denied. 9 Accordingly, it is RECOMMENDED that plaintiffs motion to reopen this action, ECF 10 | No. 11, be DENIED. 11 These findings and recommendations are submitted to the United States District Judge 12 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)().

Within fourteen days 13 | after being served with these findings and recommendations, any party may file written 14 | objections with the court and serve a copy on all parties. Such a document should be captioned 15 | "Objections to Magistrate Judge's Findings and Recommendations." Any response to the 16 | objections shall be served and filed within fourteen days after service of the objections.

The 17 | parties are advised that failure to file objections within the specified time may waive the
right to 18 || appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.
1998); Martinez 19 | v. Yist, 951 F.2d 1153 (9th Cir. 1991). 20 IT IS SO ORDERED. 22 (q Sty -
Dated: _ April 24, 2025 q—— 23 JEREMY D.,. PETERSON UNITED STATES
MAGISTRATE JUDGE 25 26 27 28