

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
VIRGINIA, RICHMOND DIVISION

Keithen D. Carter v. Lieutenant Driscoll, et al.

Carter v. Driscoll · No. 3:25CV752 · Decided December 10, 2025

SUMMARY

The United States District Court for the Eastern District of Virginia denies Keithen D. Carter’s Rule 59(e) motion seeking reconsideration of the dismissal of his civil action without prejudice. The court concludes that Carter failed to comply with the directive to return a consent to collection of fees form and therefore failed to demonstrate a basis for reconsideration. Although the original action remains closed, the court directs the Clerk to file Carter’s complaint as a new civil action.

CASE DETAILS

COURT	United States District Court for the Eastern District of Virginia, Richmond Division
JURISDICTION	United States District Court for the Eastern District of Virginia, Richmond Division
DECIDED	December 10, 2025
DOCKET	3:25CV752
DISPOSITION	other
PROCEDURAL POSTURE	The plaintiff sought reconsideration under Federal Rule of Civil Procedure 59(e) of the dismissal without prejudice of his prisoner civil-rights action for failure to comply with an order requiring him to return a consent-to-collection-of-fees form and pay the filing fee.
STANDARD OF REVIEW	Reconsideration under Rule 59(e) is an extraordinary remedy available to accommodate an intervening change in controlling law, account for newly available evidence, correct a clear error of law, or prevent manifest injustice.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion
PARTIES	Keithen D. Carter v. Lieutenant Driscoll, et al.

TOPICS

- motion for reconsideration
- civil procedure
- appellate procedure
- motions to dismiss
- civil rights

PRACTICE AREAS

civil procedure

appellate procedure

prisoner civil rights

QUESTIONS PRESENTED

1. Whether Carter's filing, submitted within twenty-eight days after dismissal and styled as a notice of appeal, should be construed as a motion under Federal Rule of Civil Procedure 59(e).
2. Whether Carter demonstrated a ground warranting relief from the dismissal under Rule 59(e).
3. Whether the court should direct the Clerk to open a new civil action after denying reconsideration.

HOLDINGS

1. A filing submitted within twenty-eight days after entry of judgment that seeks reconsideration may be construed as a motion under Federal Rule of Civil Procedure 59(e), notwithstanding its title as a notice of appeal.
2. Relief under Rule 59(e) was unwarranted because Carter did not establish an intervening change in controlling law, newly available evidence, a clear error of law, or manifest injustice.
3. The prior dismissal without prejudice was appropriate because Carter willfully failed to comply with the court's order concerning collection of the filing fee and did not pay the filing fee.

KEY QUOTATIONS

“ “[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” ”

FACTUAL BACKGROUND

The court directed Carter to affirm his intention to pay the full filing fee by returning a consent-to-collection-of-fees form. Carter did not return the form within the required thirty-day period and did not pay the statutory filing fee. After the action was dismissed without prejudice, he submitted a filing requesting reconsideration and attached the previously missing consent form.

PROCEDURAL HISTORY

The court conditionally docketed the action and directed Carter to sign and return a consent-to-collection-of-fees form, warning that noncompliance would result in summary dismissal. Carter failed to return the form and did not pay the statutory filing fee, so the court dismissed the action without prejudice under Federal Rule of Civil Procedure 41(b). Carter then filed a notice of appeal that the court construed as a Rule 59(e) motion for reconsideration. The court denied reconsideration but directed the Clerk to open a new civil action because Carter appeared intent on litigating his complaint.

DISPOSITION

other

CASES CITED

- MLC Auto., LLC v. Town of S. Pines, 532 F.3d 269, 277-78 (4th Cir. 2008)
- Dove v. CODESCO, 569 F.2d 807, 809 (4th Cir. 1978)
- Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998)
- Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993)
- Weyerhaeuser Corp. v. Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991)
- Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division KEITHEN D. CARTER, Plaintiff, v. Civil Action No. 3:25CV752
LIEUTENANT DRISCOLL, et ai., Defendants. MEMORANDUM OPINION By Memorandum
Order entered on September 26, 2025, the Court conditionally docketed the plaintiff's action. At
that time, the Court directed the plaintiff to affirm his intention to pay the full filing fee by signing
and returning a consent to collection of fees form.

The Court warned the plaintiff that a failure to comply with the above directive within thirty (30)
days of the date of entry thereof would result in summary dismissal of the action. The plaintiff
failed to comply with the Court's order to return a consent to collection of fees form.

As a result, he did not qualify for in forma pauperis status. Furthermore, he had not paid the
statutory filing fee for the instant action. See 28 U.S.C. § 1914(a). Therefore, his conduct
demonstrated a willful failure to prosecute. See Fed. R. Civ. P. 41(b).

Accordingly, by Memorandum Opinion and Order entered on November 5, 2025, the Court
dismissed the action without prejudice. On November 18, 2025, the Court received a Notice of
Appeal, that despite its title, asks for reconsideration and for the Court to "forgive me for my
misunderstanding of the consent to collection of fees form." (ECF No. 8.)

The plaintiff also attached a consent to collection of fees form. (ECF No. 9.) The plaintiff's request
for reconsideration will be construed as a motion filed pursuant to Federal Rule of Civil Procedure
59(e) ("Rule 59(e) Motion"). See MLC Auto., LLC v. Town of S. Pines, 532 F.3d 269, 277-78 (4th
Cir. 2008) (stating that filings made within twenty- eight days after the entry of judgment are
construed as Rule 59(e) motions (citing Dove v. CODESCO, 569 F.2d 807, 809 (4th Cir.

1978))). "[R]econsideration of a judgment after its entry is an extraordinary remedy which should
be used sparingly." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998)
(citation omitted) (internal quotation marks omitted).

The United States Court of Appeals for the Fourth Circuit has recognized three grounds for relief
under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account

for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing *Weyerhaeuser Corp. v. Koppers Co.*, 771 F. Supp. 1406, 1419 (D.

Md. 1991); *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990)). The plaintiff does not explicitly address any of the above recognized grounds for relief in his Rule 59(e) Motion. The plaintiff also fails to demonstrate any clear errors of law in the Court’s conclusions or that the dismissal of this action resulted in manifest injustice.

The plaintiff failed to return his consent to collection of fees form, and the Court appropriately dismissed the action. Accordingly, the Rule 59(e) Motion, (ECF No. 8), will be DENIED. Nevertheless, because it appears that the plaintiff remains intent on litigating his complaint, the Court will DIRECT the Clerk to file his complaint as a new civil action.

The Clerk will be DIRECTED to docket a copy of this Memorandum Order in the new civil action. Once a new civil action has been opened, the Court will continue to process the action. The present civil action, however, remains closed. An appropriate Order shall accompany this Memorandum Opinion. Isl Date: '2/12/25 Senior Unter Distrift Judge Richmond, Virginia