

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,<br>Richmond Division                                                                                                                                                                                          |
| JURISDICTION       | United States District Court for the Eastern District of Virginia,<br>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)

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