

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 18 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SALDY MARZAN,

Plaintiff-Appellant,

v.

CORE CIVIL CORRECTIONAL CENTER;
et al.,

Defendants-Appellees,

and

J. GUILIN, Unit Manager H-Unit; TODD
THOMAS,

Defendants.

No. 18-17304

D.C. No. 2:17-cv-04494-DJH-ESW
District of Arizona,
Phoenix

ORDER

Before: McKEOWN, BYBEE, and OWENS, Circuit Judges.

The district court certified that the appeal is frivolous and not taken in good faith. *See* 28 U.S.C. § 1915(a). On December 6, 2018, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's December 6, 2018 order, we conclude this appeal is frivolous. We therefore deny appellant's

motion to proceed in forma pauperis (Docket Entry Nos. 5 & 6) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

MDR

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Saldy Marzan,

Plaintiff,

v.

CoreCivic Correctional Center, et al.,

Defendants.

No. CV-17-04494-PHX-DJH (ESW)

ORDER

Plaintiff Saldy Marzan is confined in CoreCivic's Saguaro Correctional Center in Eloy, Arizona. In a September 11, 2018 Order, the Court dismissed Plaintiff's First Amended Complaint and this action. The Court concluded that Count One was essentially a claim that Defendant CoreCivic had engaged in a fifteen-year "secret conspiracy 'forgery'" to falsify Plaintiff's medical records and hide a 2002 back injury to avoid providing medical treatment for that injury. The Court concluded that Count One was factually frivolous or, alternatively, implausible. As to Counts Two and Three, the Court concluded that Plaintiff's claim that he is being attacked by a laser was frivolous, his retaliation claims lacked merit, and his mail claim was implausible. The Clerk of Court entered Judgment on September 11, 2018.

On October 9, 2018, Plaintiff filed a Motion (Doc. 25) seeking reconsideration of the dismissal of Count One.

Motions for reconsideration should be granted only in rare circumstances. *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). A motion for reconsideration is appropriate where the district court "(1) is presented with newly

1 discovered evidence, (2) committed clear error or the initial decision was manifestly
 2 unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J,*
 3 *Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Such motions
 4 should not be used for the purpose of asking a court “to rethink what the court had
 5 already thought through – rightly or wrongly.” *Defenders of Wildlife*, 909 F. Supp. at
 6 1351 (quoting *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101
 7 (E.D. Va. 1983)). A motion for reconsideration “may not be used to raise arguments or
 8 present evidence for the first time when they could reasonably have been raised earlier in
 9 the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).
 10 Nor may a motion for reconsideration repeat any argument previously made in support of
 11 or in opposition to a motion. *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215
 12 F.R.D. 581, 586 (D. Ariz. 2003). Mere disagreement with a previous order is an
 13 insufficient basis for reconsideration. *See Leong v. Hilton Hotels Corp.*, 689 F. Supp.
 14 1572, 1573 (D. Haw. 1988).

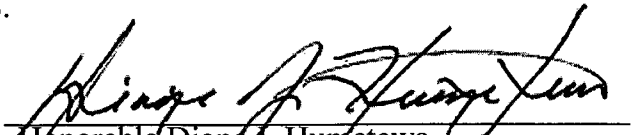
15 The Court has reviewed Plaintiff’s First Amended Complaint, the September 11
 16 Order, Plaintiff’s Motion, and the information attached to the Motion. The Court finds
 17 no basis to reconsider its decision. Thus, the Court will deny Plaintiff’s Motion.

18 **IT IS ORDERED:**

19 (1) Plaintiff’s Motion (Doc. 25) is **denied**. This case must remain **closed**.

20 (2) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3)
 21 and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal
 22 of this decision would be taken in good faith and certifies that an appeal would not be
 23 taken in good faith for the reasons stated in the Order and because there is no arguable
 24 factual or legal basis for an appeal.

25 Dated this 9th day of November 2018.

26
 27 
 28 Honorable Diane J. Hume
 United States District Judge

**Additional material
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