

APPENDIX A

Case 2:16-cv-01786-MPK Document 80 Filed 01/16/20 Page 1 of 9

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BIENVENIDO RODRIGUEZ,)
Plaintiff,) Civil Action No. 16-1786
v.) Magistrate Judge Maureen P. Kelly
REV ULLIKLEMM, LIEUTENANT) Re: ECF Nos. 73, 74 and 75
BOONE, EDWARD NIEDERHAUSER, and)
REV KIRT ANDERSON,)
Defendants.)

MEMORANDUM ORDER

Presently before the Court is Plaintiff's Motion for Relief from Judgment, Order or Proceeding ("Motion for Relief"), ECF No. 73; Plaintiff's Motion for Extension of Time to File Brief in Support of Motion for Relief from Judgment, Order or Proceeding ("Motion for Extension"), ECF No. 74; and Plaintiff's Motion to Stay to File Brief in Support of Motion for Relief from a Judgment, Order or Proceeding ("Motion to Stay"), ECF No. 75. For the reasons that follow, the motions are denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Bienvenido Rodriguez (“Plaintiff”) is currently incarcerated at the State Correctional Institution at Forest (“SCI Forest”). This action arises from Plaintiff’s incarceration at State Correctional Institution Pine Grove (“SCI Pine Grove”). Plaintiff’s claims arise out of allegations that Defendants, employees of the Pennsylvania Department of Corrections (“DOC”), violated Plaintiff’s First Amendment rights and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) by failing to make religious accommodations for the practice of

Plaintiff's religion, Yoruba Santeria, and by improperly confiscating consecrated prayer beads that Plaintiff wore in connection with his faith.

Plaintiff, represented by Attorneys Christy Foreman and Alexandra Morgan-Kurtz, filed his Complaint in this action on November 28, 2016. ECF No. 1. The Court conducted an initial case management conference, ECF No. 15, and the case was referred to the alternative dispute resolution in the form of mediation, ECF No. 17. The Honorable Kenneth Benson (ret.) conducted the mediation on April 14, 2017, and Plaintiff attended in person. ECF Nos. 20 and 21. At the conclusion of the mediation, the case was resolved. ECF No. 21.

Although there was some initial dispute over the language of the settlement agreement and release, ECF Nos. 24, 25, 28 and 29, that required the assistance of this Court, ECF Nos. 30 and 32, the settlement agreement and release was executed by the parties in May 2018. ECF No. 33. The settlement agreement and release provided that a check in the amount of \$6,500.00 was to be deposited in Plaintiff's inmate account. On July 26, 2018, this Court approved the

Stipulation of Dismissal with prejudice and closed the case. ECF Nos. 34 and 35. Fails to state that she retained jurisdiction over any issue relating to settlement Agreement.

Over two years after the settlement was reached at the mediation, this case having been fully resolved and all claims released, Plaintiff, without his counsel of record,¹ filed a Motion to Re-Open Civil Action on July 5, 2019. ECF No. 44. Plaintiff sought leave to reopen the case for what he characterized as a breach of the settlement agreement and for ineffective assistance of counsel. Plaintiff also filed a Motion for Leave to File Amended Complaint. ECF No. 46. In these Motions, Plaintiff broadly alleged that Defendants violated his religious freedoms and the +

¹ Following Plaintiff's *pro se* filing of various motions, on July 9, 2019, Plaintiff's counsel filed a motion to withdraw as counsel for Plaintiff. ECF No. 51. In support of their request, counsel explained that Plaintiff demanded they take actions with which counsel had a fundamental disagreement, and that Plaintiff appeared to have lost confidence in their representation, as he had filed multiple *pro se* motions with the Court, including twice seeking to have counsel removed. The Court granted Plaintiff's counsel's request to withdraw on July 9, 2019, and Plaintiff is now proceeding *pro se*. ECF No. 52.

*does not
explain what
is the disagreement
out.*

terms of the parties' settlement agreement, but only specifically identified two instances of purported breach: (1) Defendants' placement of settlement funds into escrow; and (2) not permitting Plaintiff to purchase his Yoruba Santeria beaded necklaces. ECF No. 53 ¶¶ 10-11. Plaintiff further claimed that, following the execution of the settlement agreement, "more constitutional claims have arisen." Id. at ¶ 12. Defendants filed a Brief in Opposition. ECF No. 57.

Upon review, the Court found that a settlement of all claims was reached, the settlement agreement was fully executed by the parties and apparently complied with by the parties. ECF No. 61 at 3. With respect to Plaintiff's request for leave to amend his Complaint, the Court further found that Plaintiff had not established the requisite good cause for delay in moving to amend his Complaint. Id. The Court noted that, to the extent Plaintiff wished to bring a new + lawsuit alleging new claims, he was free to do so. Id.

To the extent Plaintiff sought to have the Court address any issues relative to the handling of settlement funds, however, the Court granted Plaintiff permission to request that the Court schedule a conference with Plaintiff's former counsel and defense counsel, with Plaintiff participating by telephone. Id. at 4. Thereafter, Plaintiff requested, and the Court granted, the scheduling of a video status conference. ECF Nos. 63 and 64.

The Court held a status conference on November 12, 2019.² Plaintiff and Defendants' counsel participated in the conference, with Plaintiff participating remotely from SCI Forest. ECF No. 68. Plaintiff participated by audio conference as a result of technical issues with the video feed at SCI Forest. Id.

² The Court originally scheduled this status conference to take place on October 17, 2019. Because the DOC facility did not make Plaintiff available for this conference, the Court was required to reschedule this conference to November 12, 2019. ECF No. 65. At the Court's request, Plaintiff's former counsel appeared as a courtesy on October 17, 2019, but was unavailable attend on the rescheduled date.

During the conference, the Court addressed two issues that Plaintiff complained about in relation to the previous settlement: that he had not received a consecrated Santeria beaded necklace and his complaint relative to the payment of \$6,500 in settlement proceeds.

First, as to the necklace, the settlement agreement expressly provided that Plaintiff was "permitted to purchase a consecrated black and red beaded necklace and consecrated yellow beaded necklace." ECF No. 77 at 11:7-9. Plaintiff stated:

It's a little complicated because when you're initiated under the mysteries of Santeria Orisha, which is a saint, the person who initiated you has to reconsecrate the beads all over again, or a priest that is initiated under the same mysteries of the same Orisha saint that I was initiated under. That's probably where the problem comes in because they can't probably find a priest that—because those practices have to be strictly followed.

Id. at 7:4-11.

The Court asked Plaintiff to identify the name and address of the person who could consecrate the beads.

PLAINTIFF: I can't do that, right, but the person who initiated me under those mysteries of Orisha Oshun said the beads were destroyed. They would have to get another chicken and they're not going to permit that on prison grounds. They're going to charge me another \$2,500 just—the beads don't cost nothing, the beads only cost like maybe \$5.00, depending what store you buy it from, but just the consecrated thing, they're going to charge me \$2,500 all over again.

THE COURT: Your issue is—the issue is not the cost of the beads themselves, the issue is having them consecrated.

PLAINTIFF: Having to consecrate the beads, right.

Id. at 7:20-8:6.

Counsel for DOC reported that the chaplain had tried to assist Plaintiff by attempting to locate the Santeria beads, but he was told by a number of vendors that there had to be a particular type of Santeria and there were consecration issues. Id. at 10-11.

Following hearing from Plaintiff and counsel for the DOC, the Court again informed Plaintiff that the DOC had fully complied with the settlement agreement by permitting Plaintiff to purchase a Santeria consecrated black and red beaded necklace and consecrated yellow beaded necklace to be worn in his cell. Obviously, Plaintiff was free to contact vendors directly to purchase or consecrate the specific Santeria beaded necklace that Plaintiff wanted. Id. at 11-13.

Thereafter, counsel for DOC offered assistance in facilitating the delivery of the consecrated beads to Plaintiff at SCI Forest. Id. at 13-14. *There is a \$2,500.00 consecration fee that Defendants failed to pay for destroying my Santeria beaded necklaces.*

Second, in terms of the payment of the \$6,500 issued to Plaintiff as part of the settlement, Plaintiff complained that the funds went into an escrow account and were not available in their entirety for his personal use.

Counsel for the DOC explained that DC ADM 005 expressly provides:

Yes. So, two matters. The first is Pennsylvania's Act 84, which authorized the Department of Corrections to issue a policy for the collection of court-ordered restitution and fines.

The department then duly did issue such a policy and the relevant section, this is DC ADM 005, Collection of Inmate Debts Procedures Manual, Page 3-9(e)(1). It says: When an inmate receives monetary damages or a settlement as a result of prison conditions litigation—which is what happened here—that are payable from funds appropriated by general assembly or insurance policy purchased by the Commonwealth—so here it was through funds appropriated by the general assembly—the proceeds shall first be used to satisfy fines, costs and restitution and any outstanding court ordered debt related to the criminal act. When an award or settlement occurs, the chief counsel's office will advise the Bureau of Administration, the Bureau of Administration will arrange to deduct the full amount owed from the proceeds.

And I have a case here Montanez [v.] the Secretary of Pennsylvania, Department of Corrections, 773 F.3d 472 at Page 477 ([3d Cir.] 2014) which confirms that the Department of Corrections is authorized to make policy about the disposition of these funds to pay the debts.

Now, I think where the second issue comes, there's another section of the policy that says that 20 percent of any money an inmate gets to his inmate accounts, goes

to pay down the debts. That is just money that he happens to get, maybe family gives it to him or he earns it in some way. *There is no language where it mention*

Family source where the money comes from.

THE COURT: That is in his inmate account.

Id. at 16:19-17:22.

The Court explained to Plaintiff that in accordance with Act 84 and the DOC policy, DC ADM 005, regarding collection of inmate debt procedures, that if he receives any lump sum settlement being paid by state funds, those funds—in this case \$6,500—must first go to court-ordered restitutions, fines and costs. Id. at 19.

Plaintiff indicated that he understood the applicable statute and policy, but he “would like” to pay only 50% towards restitution. Id.

At the conclusion of the conference, the Court clearly stated:

So, I scheduled the video conference so that we could have you and Mr. Mazzocca in the Court’s presence because I wanted to clarify to you to make sure it was clear with you in terms of the beads and what DOC was required to do.

In terms of the beads, DOC stands ready to permit you to purchase the consecrated black and red beaded necklace, as well as the consecrated yellow beaded necklace. We’ve talked about a couple different ways you can get it. But it’s your responsibility to get the beads, and if you can get them, if you can get them to Mr. Mazzocca, he has represented to the Court that he will make sure they get to you.

Secondly, in terms of the 6,500, DOC, the defendants in this case, have paid the 6,500, and the issue is that you have substantial court-ordered restitutions, fines and costs that get paid first because that money is coming to you from the state. So, I wanted to get on the phone or on video with you and just be clear as to why that is. So, at this point, as I ruled, DOC has not violated the settlement agreement and release of all claims.

Id. at 20:14-21:8.

II. LEGAL STANDARD

Plaintiff filed his Motion for Relief pursuant to Federal Rule of Civil Procedure 60(b).

This Rule provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

III. DISCUSSION

A. Motion for Relief (ECF No. 73)

On December 9, 2019, Plaintiff filed the instant Motion for Relief pursuant to Federal Rule of Civil Procedure 60(b). ECF No. 73. In his Motion, Plaintiff seeks relief from the November 12, 2019 status conference. Id. at 1. He argues that the conference was inappropriate because, due to technical issues with the video feed, the conference was conducted by audio. Id. He argues that he was prevented from providing his opposing argument as a result of audio + deficiencies. Id.

Upon review, Plaintiff's Motion for Relief, ECF No. 73, is denied. As this Court + previously held, and again explained to Plaintiff during the November 12, 2019 conference, this matter is settled and concluded. Defendants have complied with the terms of the settlement + agreement. If Plaintiff seeks to assert new claims, he must file a new lawsuit. With respect to any technical difficulties that occurred at the conference on November 12, 2019, these did not result in Plaintiff's inability to participate by audio or affect the outcome. The transcript of the

conference reflects a thorough discussion with Plaintiff of the issues he raised relative to the settlement. ECF No. 77. To the extent Plaintiff sought to read a statement into the record at the conclusion of the conference, the Court permitted Plaintiff to submit this statement to the Court for consideration. *Id.* at 28:13-22. + this is when deficiencies started.

B. Motion for Extension and Motion to Stay (ECF Nos. 74 and 75)

In addition to his Motion for Relief, Plaintiff has filed a Motion for Extension, ECF No. 74, requesting an extension of time to file a brief in support of his Motion for Relief. On January 10, 2020, Plaintiff filed the requested brief in support of his Motion for Relief. ECF No. 79. Therefore, the Motion for Extension is denied as moot.

Plaintiff also filed a Motion to Stay, ECF No. 75, requesting the Court to "stay the briefing time" to reflect that his brief and exhibits will not be filed until February 2020. Because the brief has now been filed, the Motion to Stay is also denied as moot.

III. CONCLUSION

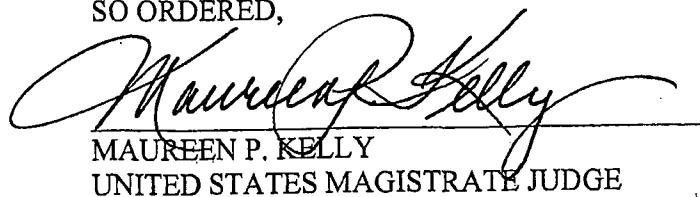
For the foregoing reasons, Plaintiff's Motion for Relief, ECF No. 73, is denied as without merit because Defendants have complied with the terms of the settlement. Plaintiff's Motion for Extension and Motion to Stay, ECF Nos. 74 and 75, are denied as moot.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72.C.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this Order to file an appeal to the District Judge which includes the basis for objection to this Order. Any appeal is to be submitted to the Clerk of Court, United States District Court, 700 Grant Street,

Room 3110, Pittsburgh, PA 15219. Failure to file a timely appeal will constitute a waiver of any appellate rights.

Dated: January 16, 2020

SO ORDERED,



Maureen P. Kelly

MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: Bienvenido Rodriguez
LQ7479
SCI FOREST
286 Woodland Drive
P.O. Box 307
Marienville, PA 16239

All counsel of record via CM/ECF

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BIENVENIDO RODRIGUEZ,

Plaintiff,

v.

REV ULLIKLEMM, *et al.*

Defendants.

2:16-cv-1786

Hon. J. Nicholas Ranjan

Magistrate Judge Maureen P. Kelly

MEMORANDUM ORDER

This is a *pro se* prisoner civil rights action under 42 U.S.C. § 1983. The case was settled in 2017 and, after a squabble concerning the language of the settlement agreement, dismissed with prejudice in 2018. That was the end of it until last year, when Plaintiff Bienvenido Rodriguez sought to set aside the dismissal and re-open the case based on Defendants' alleged breach of the settlement agreement. Magistrate Judge Maureen P. Kelly denied the motion, and held a video status conference with Mr. Rodriguez to explain that decision. Mr. Rodriguez has since been trying to object or appeal in various ways.

First, he filed a motion under Fed. R. Civ. P. 60(b) seeking relief from Judge Kelly's decision, which Judge Kelly denied. Then, he noticed an appeal to the Third Circuit from the "outcome" of the status conference. That appeal was recently dismissed for lack of jurisdiction because, as the Third Circuit explained, the status conference was not itself a "final" judgment or order. Finally, and most recently, Mr. Rodriguez has filed objections to Judge Kelly's (1) denial of his Rule 60(b) motion; and (2) denial of his separate motion seeking free copies of transcripts and other record documents for use in his "appeal." Those objections are now before this Court.

Before deciding the objections, some procedural housekeeping is necessary, given the unusual posture of the case and Mr. Rodriguez's recent and unsuccessful attempt to appeal.

Upon review of the record, it is apparent that, until now, no "final," appealable order has yet been issued in this case. Judge Kelly's orders denying the motion to re-open and Rule 60(b) motion were not intended to be effective "final" orders, because the parties did not consent to the jurisdiction of a Magistrate Judge back when this case began. [ECF 8]. Instead, from its inception, this matter has only been referred to Judge Kelly for pre-trial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1). *See Campbell v. Sec'y for Dep't of Corr.*, 370 F. App'x 5, 8 (11th Cir. 2010) ("If a magistrate judge exercises jurisdiction pursuant to § 636(c) without the parties' consent, the resulting judgment is not final . . .").

Nevertheless, it is clear what Judge Kelly has concluded with respect to Mr. Rodriguez's motions to re-open the case (that the case should not be re-opened) and what Mr. Rodriguez wishes to do now (object to and then appeal that decision). Thus, to provide clarity with respect to the orders at issue and objections, as well as to Mr. Rodriguez's appellate rights, the Court **HEREBY ORDERS** as follows:

1. The Court construes Mr. Rodriguez's motion to re-open this case [ECF 44] and motion for relief from Judge Kelly's denial of that motion [ECF 73] together as a single motion under Fed. R. Civ. P. 60(b) for relief from the previous dismissal of this action with prejudice. [ECF 34; ECF 35].

2. The Court further finds that Judge Kelly's previous orders [ECF 61; ECF 80] denying Mr. Rodriguez's motion to re-open the case [ECF 44] and denying his motion for relief from that decision [ECF 73] were not "final" orders, but instead are reports and recommendations.

3. The Court reviews *de novo* Judge Kelly's recommendation that the Court deny Mr. Rodriguez's motions. 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b) ("The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to.").

4. Upon *de novo* consideration, the Court finds that Judge Kelly's reasoning was correct. Specifically, the Court agrees, based on its own review of the record, with Judge Kelly's determination that Defendants have "complied with the terms of the settlement agreement." [ECF 80 at p. 7]. Thus, there is no basis for re-opening the case.

5. What's more, even if Defendants had breached the settlement agreement, "mere breach of a settlement agreement generally does not state a basis to set aside a judgment of dismissal under Rule 60(b) and reinstate the underlying suit." *Guianan v. Villaflor*, 544 F. App'x 64, 67 n.2 (3d Cir. 2013). Instead, a breach gives rise only "to a cause of action to *enforce* the settlement agreement." *Sawka v. Healtheast, Inc.*, 989 F.2d 138, 140 (3d Cir. 1993).

6. As a result, the Court **OVERRULES** Mr. Rodriguez's objections to ECF 61 and ECF 80, **ADOPTS** Judge Kelly's recommendations as its own opinion, and **DENIES** Mr. Rodriguez's motions to re-open the underlying case. [ECF 44; ECF 73].

7. To the extent Mr. Rodriguez seeks to assert *new* constitutional claims unrelated to his original case (e.g., claims based on conduct that occurred *after* the case was settled), he may of course do so by filing a separate lawsuit, subject to any applicable statute of limitations or administrative exhaustion requirements.

8. Separately, Mr. Rodriguez has objected [ECF 87; ECF 88] to Judge Kelly's denial [ECF 82; ECF 85] of his motions seeking free copies of transcripts and other record documents. [ECF 78; ECF 84]. When a party

objects to a non-dispositive, pre-trial order issued by a magistrate judge, the Court reviews findings of fact for “clear error” and legal conclusions “de novo.” *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017).

9. Upon *de novo* review, the Court determines that Judge Kelly correctly denied the motions. Despite his indigent status, Mr. Rodriguez is not entitled to free copies of court records. *See Anderson v. Gillis*, 236 F. App’x 738, 739 (3d Cir. 2007) (“The *in forma pauperis* statute does not grant the court the authority to provide an indigent litigant with copies of all the documents in the record.”); *Fantone v. Herbik*, No. CIV.A. 11-0484, 2011 WL 7113312, at *4 (W.D. Pa. Dec. 23, 2011) (“[P]ro se Plaintiffs are not entitled to free copies of court documents.”) (Eddy, M.J.), *report and recommendation adopted*, No. CIV.A. 11-0484, 2012 WL 273367 (W.D. Pa. Jan. 30, 2012).

10. Moreover, there is only one circumstance where an indigent party is entitled to a free transcript in a civil case. That is, under 28 U.S.C. § 753(f), “an indigent party is entitled to a transcript at public expense only on appeal, and only if the indigent litigant demonstrates that the appeal is not frivolous and presents a substantial question.” *Toaz v. Lane*, No. 3:17-CV-01425, 2019 WL 1264880, at *2 (M.D. Pa. Mar. 19, 2019). Here, Mr. Rodriguez’s appeal has been dismissed by the Third Circuit for lack of jurisdiction, and so Section 753 cannot apply.

11. As a result, the Court **OVERRULES** Mr. Rodriguez’s objections [ECF 87; ECF 88] to Judge Kelly’s orders [ECF 82; ECF 85] and **DENIES** his motions. [ECF 78; ECF 84]. Of course, this denial is without prejudice to Mr. Rodriguez seeking a free transcript under 28 U.S.C. § 753(f) in the event that he appeals from this final order. To receive one, he would need to demonstrate that his appeal is not “frivolous” and raises a “substantial question.” *See Toaz*, No. 3:17-CV-01425, 2019 WL 1264880, at *2.

12. Having resolved all pending motions and objections, this case is hereby **DISMISSED** with prejudice. The Clerk of Court is directed to mark this case as **CLOSED**.

DATE: May 11, 2020

BY THE COURT:

/s/ J. Nicholas Ranjan

United States District Judge

ALD-306

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2029

BIENVENIDO RODRIGUEZ, JR., Appellant

v.

REV. ULLI KLEMM; LIEUTENANT BOONE; EDWARD NIEDERHISER,
Facility Chaplaincy Program Director at S.C.I. Graterford;
REV. KIRT ANDERSON, Facility Chaplaincy Program Director at S.C.I. Pine Grove

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 2-16-cv-01786)
District Judge: Honorable J. Nicholas Ranjan

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B), or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 17, 2020

Before: MCKEE, SHWARTZ, and PHIPPS, Circuit Judges

(Opinion filed: October 23, 2020)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Bienvenido Rodriguez is a Pennsylvania prisoner who was previously housed at State Correctional Institution Pine Grove. In December 2016, Rodriguez, represented by counsel, filed a complaint in the District Court claiming that the prison had violated his First Amendment rights and the Religious Land Use and Institutionalized Persons Act by failing to make accommodations for the practice of his religion, Yoruba Santeria. The matter was referred to a Magistrate Judge. The parties agreed to mediation and settled the dispute in April 2017. In July 2018, the Magistrate Judge approved the parties' stipulation of dismissal and dismissed the case with prejudice.¹

Approximately one year later, in July 2019, Rodriguez filed several pro se motions seeking to reopen the case.² The Magistrate Judge denied relief, concluding that all claims had been settled and that the defendants had fully complied with the terms of the agreement. The Magistrate Judge denied his request to amend the complaint and explained that if Rodriguez wished to bring a new lawsuit alleging new claims, he was free to do so. Rodriguez, dissatisfied with the Magistrate Judge's ruling, requested a videoconference. At the conference on November 12, 2019, Rodriguez complained that he had not received a consecrated Santeria beaded necklace and had not been given access to the settlement proceeds. The Magistrate Judge advised Rodriguez that the

¹ The Magistrate Judge noted in her order that she would retain jurisdiction to resolve issues related to the settlement agreement.

² Rodriguez's counsel of record then moved to withdraw, explaining that they had a fundamental disagreement with Rodriguez's demands to reopen the case. The Magistrate Judge granted counsel's request.

defendants had complied with the agreement by permitting him to purchase a Santeria consecrated necklace, and that the defendants had properly placed the funds from the settlement into an escrow account.³

Rodriguez then filed a motion under Rule 60(b) of the Federal Rules of Civil Procedure alleging that he had not been given a sufficient opportunity to present his arguments at the conference, in part because he was forced to appear via audioconference due to technical difficulties with the video connection. The Magistrate Judge rejected this argument and denied relief. Rodriguez appealed the ruling to the District Court.

The District Court: (1) construed Rodriguez's motion to reopen and Rule 60(b) motion together as a single Rule 60(b) motion for relief from the Magistrate Judge's July 2018 order dismissing the complaint with prejudice in light of the settlement agreement; (2) construed the Magistrate Judge's orders denying those motions as reports and recommendations because no final order had yet been entered in the case; (3) upon de novo review of Rodriguez's Rule 60(b) motion, agreed with the Magistrate Judge that Rodriguez failed to provide a basis for reopening; and (4) denied Rodriguez's motion. Rodriguez appealed.

We have jurisdiction pursuant to 28 U.S.C. § 1291.⁴ We review the District Court's decision not to reopen the case for abuse of discretion. See Reform Party of

³ Rodriguez attempted to appeal from the Minute Entry documenting the hearing, but this Court dismissed the appeal for lack of jurisdiction. C.A. No. 19-3722 (order entered May 5, 2020).

⁴ We construe the District Court's order as adopting the Magistrate Judge's underlying order dismissing the case pursuant to the parties' stipulation of dismissal.

Allegheny County v. Allegheny County Dep't of Elections, 174 F.3d 305, 311 (3d Cir. 1999) (en banc).

We will summarily affirm the District Court's order because no substantial question is presented by this appeal. See Third Cir. LAR 27.4; I.O.P. 10.6. We have reviewed the record and agree with the District Court that Rodriguez's motions do not state a basis for reopening; as the District Court and Magistrate Judge explained, the defendants fully complied with the terms of the settlement agreement. To the extent that Rodriguez asserted that he was not given an opportunity to fully present his arguments at the November 12, 2019 conference, we have reviewed the transcript and agree with the Magistrate Judge that he was able to present his case.

Accordingly, we will summarily affirm.

ALD-306

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2029

BIENVENIDO RODRIGUEZ, JR., Appellant

v.

REV. ULLI KLEMM; LIEUTENANT BOONE; EDWARD NIEDERHISER,
Facility Chaplaincy Program Director at S.C.I. Graterford;
REV. KIRT ANDERSON, Facility Chaplaincy Program Director at S.C.I. Pine Grove

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 2-16-cv-01786)
District Judge: Honorable J. Nicholas Ranjan

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B), or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 17, 2020

Before: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal due to a jurisdictional defect, possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B), or

possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on [AA
September 17, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court
entered May 11, 2020, be and the same hereby is affirmed. All of the above in
accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: 23 October 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BIENVENIDO RODRIGUEZ,)
Plaintiff,) Civil Action No. 16-1786
v.) Magistrate Judge Maureen P. Kelly
REV ULLIKLEMM, LIEUTENANT)
BOONE, EDWARD NIEDERHAUSER, and)
REV KIRT ANDERSON,)
Defendants.)

HEARING MEMO

HEARING HELD: Video/audio Conference
DATE HEARING HELD: November 12, 2019
BEFORE: Magistrate Judge Maureen P. Kelly

Appearing for Plaintiff:
Bienvenido Rodriguez

Appearing for Defendant:
Timothy Mazzocca, Esquire

Hearing began at 2:14 p.m.

Hearing concluded at 3:08 p.m.

Stenographer: Julie Kienzle

OUTCOME:

1. Conference conducted.
2. Plaintiff informed that case has been resolved and Defendants have complied with terms of settlement agreement. Plaintiff informed that any new claims must be brought in new lawsuit.
3. Due to technical issues, conference conducted by audio conference call. Due to certain audio issues at the end of the conference impacting transcription by the court reporter, Plaintiff was permitted to submit his four page closing statement for filing on the docket and attachment as part of the record to transcript.

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BIENVENIDO RODRIGUEZ,

Plaintiff,

Civil Action No. 16-1786

REV. ULLI KLEMM, et al.

Defendants

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Settlement Agreement" or "Release"), is entered into this 26th day of April, 2018, by and between Plaintiff, BIENVENIDO RODRIGUEZ, and Defendants ULRICH KLEMM, KIRT ANDERSON, EDWARD NIEDERHISER, and RICHARD BOONE, and their employer, the Pennsylvania Department of Corrections. With the intent to be legally bound, the Parties hereby agree as follows:

I, BIENVENIDO RODRIGUEZ, the Plaintiff in this case, for and in consideration of:

- 1) The payment of the sum of TEN THOUSAND U.S. dollars and 00/cents (\$10,000.00);
- 2) If five or more inmates intend to participate, Plaintiff will be permitted to attend a staff-supervised weekly Santeria religious service on Mondays at which time he (and other inmates present) will be able to read, either privately or aloud, and watch/listen to religious printed and audiovisual material that has been pre-approved by the Department of Corrections. Neither Plaintiff nor any other

inmate present at such weekly services shall be permitted to preach, teach, lead, or offer commentary in any way on the religious material being presented. The religious service shall not exceed 60 minutes in length.

- 3) If five or more inmates intend to participate, Plaintiff will be permitted to attend a yearly January 6 religious service. The inmates attending the feast may purchase religiously appropriate food items for consumption at the feast. The menu will be determined through consultations with the dietary and religious departments and the religious community at the facility Plaintiff is housed.
- 4) Plaintiff will be provided with a catalog containing religious pictures of saints/gods/orishas for sale. He may then purchase such pictures provided they are approved by the Department of Corrections.
- 5) At the weekly religious gatherings and/or in his cell, Plaintiff will be permitted to utilize an unlit cigar in a religiously appropriate manner. However, this shall not be permitted at SCI-Pine Grove or any other prison designated as tobacco-free. If Plaintiff wishes to utilize the cigar while at a tobacco-free institution, the Department of Corrections will transfer him to another prison where tobacco use is permitted. Any such transfer will be at the discretion of the Department of Corrections and to a prison of the Department of Corrections' choosing. It is understood that any such transfer may not be immediate and further transfers may occur for penological reasons. After such a transfer, Plaintiff and any inmates who wish to participate (provided there are a minimum of five inmates who desire to participate) will be allowed to light the cigar in an outdoor ceremony.
- 6) The Department of Corrections will provide information currently in its

possession on scholars/outside practitioners of Santeria to Plaintiff to assist Plaintiff in obtaining a volunteer for Santeria religious services, to the extent it is in possession of such information.

- 7) Subject to pre-approval by the Department of Corrections, Plaintiff will be permitted to purchase a copy of the book Santeria the Religion, by Migene Gonzalez Wippler that he has described as his "Bible".
- 8) Plaintiff is permitted to purchase a consecrated black and red beaded necklace and a consecrated yellow beaded necklace. Plaintiff may use and/or wear both necklaces inside of his cell. Plaintiff is not permitted to use and/or wear either necklace outside of his cell. If Plaintiff takes either necklace outside of his cell, he may be issued a misconduct and may have the necklaces confiscated at the discretion of the Department of Corrections.

The items enumerated in numbers 1) through 8) represent both the liquidation in full of all Plaintiff's claims against Defendants as described in the Complaint filed at Civil Action No. 16-1786 in the United States District Court for the Western District of Pennsylvania, and the liquidation in full of all claims for costs of the attendant litigation.

PLAINTIFF DOES HEREBY remise, release and forever discharge Defendants ULRICH KLEMM, KIRT ANDERSON, EDWARD NIEDERHISER, and RICHARD BOONE and their employer, the Pennsylvania Department of Corrections, its officers, officials, employees, agents, representatives and assigns, of and from:

all manner of claims, actions, causes of action, suits in law or equity, debts, contracts, judgments, and demands of any kind whatsoever (including for attorneys' fees and costs of suit), both known and unknown, foreseen and

unforeseen, which I now have pertaining to or arising out of my incarceration with the Pennsylvania Department of Corrections against ULRICH KLEMM, KURT ANDERSON, EDWARD NIEDERHISER, and RICHARD BOONE, including, without limitation, all claims relating to or arising out of all incidents, events and allegations that were or could have been asserted in the civil action filed by me at Civil Action No. 16-1786 in the United States District Court for the Western District of Pennsylvania, and any other related claims by me that have been or could have been asserted in any internal or administrative proceeding, or other civil action against the Defendants or the Commonwealth of Pennsylvania or any of its agencies and/or its officers, employees or agents related to the practice of the Santeria religion.

IT IS FURTHER ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT:

1. The settlement sum shall be payable as follows: A check in the amount of \$6,500.00 to be deposited in Plaintiff's inmate account; a check(s) in the amount of \$3,500.00 made out to the Pennsylvania Institutional Law Project.
2. It is agreed and understood that Plaintiff is solely responsible for the tax liabilities and consequences, if any, related to his receipt of settlement monies pursuant to this Release, and Defendants shall bear no responsibility for such liability or consequences, if any.
3. This Settlement Agreement and Release is in compromise of a disputed claim or claims embodied in the aforesaid complaint filed by Plaintiff, and is entered into to avoid further protracted litigation of the matter. Neither this Agreement nor the payment being made hereunder shall be construed as an admission of liability or

wrongdoing on the part of the Defendants or the Defendants' employer, the Pennsylvania Department of Corrections, its officers or employees, such liability or wrongdoing being expressly denied.

4. Plaintiff agrees, upon receipt of payment pursuant to this Settlement Agreement, promptly to dismiss with prejudice the Civil Action filed at No. 16-1786 in the United States District Court for the Western District of Pennsylvania.

5. It is further agreed and understood that if any term, condition or provision of this Release shall be determined by a court of competent jurisdiction to be void or invalid, then only such term, condition or provision determined to be void or invalid shall be stricken from the Release, and the remainder of the Release shall continue in full force and effect in all other respects. This Release shall be interpreted in accordance with the Laws of the Commonwealth of Pennsylvania.

6. It is acknowledged and agreed that this Agreement, with due regard for the pertinent provisions of the Commonwealth Attorneys Act, is not, cannot and shall not be construed to be a consent decree. The undertakings and promises herein by the Defendants are not specifically enforceable as a consent decree in the United States District Court for the Western District of Pennsylvania.

IT IS ACKNOWLEDGED, UNDERSTOOD AND AGREED, that this SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS contains the entire agreement between BIENVENIDO RODRIGUEZ, and the Defendants in this action, and its terms are contractual and no mere recital.

I, Bienvenido Rodriguez, further state that I have read carefully the foregoing document, know and understand its contents and sign the same as my free and voluntary

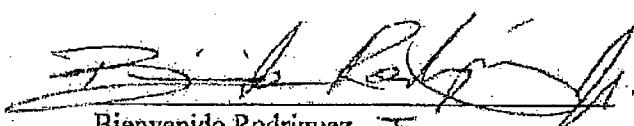
act with the intent to be bound by its terms, and that I have conferred with counsel concerning its terms and the consequences of my signature.

IN WITNESS HEREOF AND INTENDING TO BE LEGALLY BOUND; the undersigned have approved and executed this Settlement Agreement and Release on the dates set forth opposite their respective signatures below.

CAVEAT - PLEASE READ BEFORE AFFIXING YOUR SIGNATURE.

3/20/2018

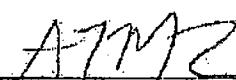
Date



Bienvenido Rodriguez, Jr.
Plaintiff

4/20/2018

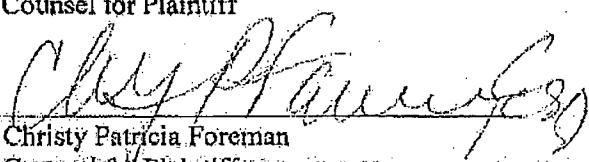
Date



Alexandra T. Morgan-Kurtz
Counsel for Plaintiff

4/20/18

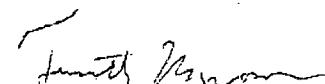
Date



Christy Patricia Foreman
Counsel for Plaintiff

4/26/18

Date



Timothy Mazzocca
Counsel for Defendant