UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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PLRA C.R. 3(b) FINAL ORDER

April 29, 2021

No. 21-1313	KEVIN L. MARTIN, Plaintiff - Appellant v. KENNETH P. COTTER, et al., Defendants - Appellees

Originating Case Information:

District Court No: 3:18-cv-00900-DRL-MGG
Northern District of Indiana, South Bend Division
District Judge Damon R. Leichty

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on April 29, 2021 and was given fourteen (14)days to pay the $505.00 filing fee. The pro se appellant has not paid the $505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of $505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b). Newlin v. Helman, 123 F.3d 429, 433* (7th Cir. 1997).

form name: **c7_PLRA_3bFinalOrder**(form ID: **142**)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KEVIN L. MARTIN,

Plaintiff,

v.

KENNETH P. COTTER *et al.*,

Defendants.

CAUSE NO. 3:18-CV-900 DRL-MGG

OPINION AND ORDER

Kevin L. Martin, a prisoner without a lawyer, filed a motion to alter or amend judgment. Because it was ostensibly signed and then submitted within 28 days of dismissal,[1] the court construes it as a motion to alter the judgment under Federal Rule of Civil Procedure 59(e). *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Banks v. Chicago Bd. of Educ.*, 750 F.3d 663, 666 (7th Cir. 2014). "Altering or amending a judgment under Rule 59(e) is permissible when there is newly discovered evidence or there has been a manifest error of law or fact." *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006).

Here, Mr. Martin has presented no newly discovered evidence or demonstrated a manifest error of fact or law. In his complaint, Mr. Martin alleged that Prosecuting

[1] The dismissal order was entered on November 15, 2019 (ECF 14), and the judgment was entered on November 18, 2019 (ECF 15). The motion to alter or amend judgment was not docketed until May 12, 2020 (ECF 16). However, Mr. Martin states that he electronically filed the document with the court on November 25, 2019, using the CM/ECF system at the Westville Correctional Facility. ECF 11 at 11; *see also* ECF 16-1 (notice to the court stating that he placed the motion in Caseworker White's hand on November 25, 2019, to be e-filed). Although Mr. Martin provides no plausible explanation for the almost five-and-a-half-month delay in processing, in the interests of justice, the court will give Mr. Martin the benefit of the prison mailbox rule and evaluate his motion under the Rule 59 standards. *See Edwards v. United States*, 266 F.3d 756, 758 (7th Cir. 2001).

request for injunctive relief is concerned, he may not bring such claims in a civil rights action. Mr. Martin repeatedly asserts that he is seeking exculpatory evidence that was allegedly withheld by Mr. Cotter and his own defense attorneys. However, as noted in this court's previous order, "*Brady* claims have ranked within the traditional core of habeas corpus and outside the province of § 1983." *Skinner v. Switzer*, 562 U.S. 521, 536 (2011). The court in *Skinner* analyzed the difference between evidence like post-trial DNA testing—which can be sought in a civil rights action—and alleged *Brady* materials which cannot. *Id.* "Unlike DNA testing, which may yield exculpatory, incriminating, or inconclusive results, a *Brady* claim, when successful postconviction, necessarily yields evidence undermining a conviction: *Brady* evidence is, by definition, always favorable to the defendant and material to his guilt or punishment." *Id.* at 536–37 (citing *Heck v. Humphrey*, 512 U.S. 477, 490 (1994) (a claim that prosecutors and an investigator had destroyed evidence that was "exculpatory in nature" could not be brought pursuant to § 1983) and *Amaker v. Weiner*, 179 F.3d 48, 51 (2d Cir. 1999) (holding that a prisoner's claim that he was denied "meaningful access to the courts" by the withholding of exculpatory evidence was not valid under § 1983 because it "sounds under *Brady v. Maryland*" and "does indeed call into question the validity of his conviction")). Mr. Martin cites to *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999) to support his position, but that case involved a challenge to the denial of a habeas corpus petition—it was not initiated as a

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