Appendix A

Order of the United States Court of Appeals, June 06, 2022.

Case No. 20-1913

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

RUFUS SPEARMAN

Plaintiff - Appellant

v.

MARY PARSON, et al.

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation:

The proper fee was not paid by September 16, 2022.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued: October 18, 2022

No. 20-1913

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RUFUS SPEARMAN,

Plaintiff-Appellant,

v.

MARY PARSON, et al.,

Defendants-Appellees.

ORDER

Before: BATCHELDER, Circuit Judge.

Rufus Spearman, a pro se Michigan prisoner, moves this court for permission to proceed in forma pauperis in his appeal from the district court's order denying his motion for relief from judgment, which he brought as an "independent action" in equity, as provided by Rule 60(d)(1) of the Federal Rules of Civil Procedure. *See* Fed. R. App. P. 24(a)(5). Spearman's Rule 60(d)(1) motion sought relief from the district court's judgment dismissing his 42 U.S.C. § 1983 complaint pursuant to the Prison Litigation Reform Act, 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

In February 2018, Spearman filed a § 1983 complaint against 38 employees within the Michigan Department of Corrections ("MDOC"), mostly psychiatrists, psychologists, and other mental health workers. He alleged that the defendants forced him to take antipsychotic medications, namely Haldol, and forced him to enter the MDOC's Corrections Mental Health Program ("CMHP") against his will, in violation of his rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution, as well as the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, et seq. He sought compensatory and punitive damages, as well as declaratory and injunctive relief.

In March 2018, on initial screening, the district court dismissed Spearman's complaint for failing to state a claim upon which relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2), 1915A.

Appendix A

To that end, noting that the exhibits filed alongside his complaint showed that he was suffering from a serious mental illness that potentially made him a danger to himself or others, the district court determined that Spearman had failed to state a federal claim to refuse antipsychotic medications when such treatment was reasonably related to a legitimate penological interest. *See Washington v. Harper*, 494 U.S. 210, 224 (1990). Spearman thereafter sought to appeal the district court's judgment, but this court dismissed that appeal for want of prosecution. *Spearman v. Parson*, No. 18-1393 (6th Cir. Nov. 16, 2018).

In July 2019, Spearman instituted an "independent action" by filing a Rule 60(d)(1) motion, asserting that the exhibits on which the district court relied to dismiss his § 1983 complaint—namely, mental health records authored by several of the named defendants—contained "fraudulent information to justify" his involuntary admission into the CMHP and the involuntary administration of antipsychotic medications. In support of his assertion, Spearman cited a "Comprehensive Psychiatric Examination" that was issued in May 2018—nearly two months *after* the district court dismissed his § 1983 complaint—in which a psychiatrist employed with the CMHP noted that Spearman has never "been a danger to himself or others and has always taken good care of himself regarding [activities of daily living]." The psychiatrist further noted that he had discontinued Spearman's psychotropic medications in March 2018 upon finding that they "made no change in his thinking." Spearman also cited a "Qualified Mental Health Professional Report" from May 2018, in which a case manager stated that, although some of Spearman's records indicate that he has a history of attempting suicide by hanging or drowning, she "did not find any documents [in his record] that substantiate these claims."

The district court denied Spearman's Rule 60(d)(1) motion, concluding that it was an improper attempt to relitigate his § 1983 claims that it had already considered and rejected. The district court also denied Spearman's subsequent motion to alter or amend the judgment, filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, and certified, pursuant to 28 U.S.C. § 1915(a)(3), that Spearman had no good-faith basis to appeal. This appeal followed.

When a district court has certified that a pro se plaintiff's appeal is not taken in good faith, the plaintiff may file a motion in this court for leave to proceed in forma pauperis. Fed. R. App. P. 24(a)(5). This court will grant an in forma pauperis motion only if it is persuaded that the appeal is being taken in good faith, i.e., that the issues to be raised are not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An issue is frivolous if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Callihan v. Schneider*, 178 F.3d 800, 804 (6th Cir. 1999). This court should grant an in forma pauperis motion where the claims on appeal deserve "further argument or consideration." *Coppedge*, 369 U.S. at 454.

Spearman's appeal lacks an arguable basis in law, and is therefore frivolous, because his allegations of fraud fall far short of meeting the standard for obtaining relief under Rule 60(d)(1). *See Giasson Aerospace Sci., Inc. v. RCO Eng'g, Inc.*, 872 F.3d 336, 340-41 (6th Cir. 2017). Accordingly, Spearman's motion to proceed in forma pauperis on appeal is **DENIED**. Unless Spearman pays the $505 filing fee to the district court within 30 days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix B

Opinion and Order of the United States District Court, March 28, 2018.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUFUS LAMAR SAVIN SPEARMAN,

Plaintiff,

v.

MARY PARSON, ET. AL.,

Defendants,
_____/

Civil Action No. 2:18-CV-10673
HONORABLE NANCY G. EDMUNDS
UNITED STATES DISTRICT COURT

OPINION AND ORDER OF SUMMARY DISMISSAL

I. Introduction

Before the Court is Plaintiff Rufus Lamar Savin Spearman's *pro se* civil rights complaint filed pursuant to 42 U.S.C.§ 1983. Plaintiff is an inmate incarcerated at the Brooks Correctional Facility in Muskegon Heights, Michigan. For the reasons stated below, the complaint is **SUMMARILY DISMISSED WITH PREJUDICE FOR FAILING TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

II. Standard of Review

Plaintiff has been allowed to proceed without prepayment of fees. See 28 § U.S.C. 1915(a); *McGore v. Wrigglesworth,* 114 F. 3d 601, 604 (6th Cir. 1997). However, 28 U.S.C. § 1915(e)(2)(B) states:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:
>
> (B) the action or appeal:
> (i) is frivolous or malicious;
> (ii) fails to state a claim on which relief may be granted; or
> (iii) seeks monetary relief against a defendant who is immune from such relief.

Appendix B

A complaint is frivolous if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Denton v. Hernandez*, 504 U.S. 25, 32 (1992). A complaint lacks an arguable basis in law or fact if it contains factual allegations that are "fantastic or delusional" or if it is based on legal theories that are indisputably meritless. *See Brown v. Bargery*, 207 F.3d 863, 866 (6th Cir.2000)(citing *Neitzke*, 490 U.S. at 327–28); *See also Lawler v. Marshall*, 898 F.2d 1196, 1198–99 (6th Cir.1990). *Sua sponte* dismissal is appropriate if the complaint lacks an arguable basis when filed. *McGore,* 114 F. 3d at 612; *Goodell v. Anthony,* 157 F. Supp. 2d 796, 799 (E.D. Mich. 2001). A federal court is permitted to consider any prison grievances and responses to those grievances that are attached to and incorporated in a *pro se* prisoner complaint in determining whether or not the case is subject to summary dismissal under 28 U.S.C. §§ 1915(e)(2) and 1915A(b) for failing to state a claim upon which relief can be granted. *See e.g. White v. Caruso*, 39 F. App'x. 75, 78 (6th Cir. 2002). Courts are also permitted to review other documents that are attached to a *pro se* complaint to determine whether or not a *pro se* plaintiff states a claim upon which relief can be granted or whether the complaint should be summarily dismissed. *See e.g. Powell v. Messary*, 11 F. App'x. 389, 390 (6th Cir. 2001).

While a complaint "does not need detailed factual allegations," the "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)(footnote and citations omitted). Stated differently, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff

pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

To establish a prima facie case under 42 U.S.C. § 1983, a civil rights plaintiff must establish that: (1) the defendant acted under color of state law; and (2) the offending conduct deprived the plaintiff of rights secured by federal law. *West v. Atkins*, 487 U.S. 42, 48 (1988). "If a plaintiff fails to make a showing on any essential element of a § 1983 claim, it must fail." *Redding v. St. Eward*, 241 F. 3d 530, 532 (6th Cir. 2001).

III. Complaint

Plaintiff has filed a forty page complaint, along with over one hundred and thirty pages of exhibits and documents that he wishes to incorporate as part of his complaint. The gravamen of plaintiff's complaint is that various prison officials, psychiatrists, psychologists, or other mental health workers at several prisons have forced him against his will to enter the Corrections Mental Health Program (CMHP). Plaintiff further claims that the defendants are forcibly medicating him with anti-psychotic medications, specifically Haldol. Plaintiff alleges that in forcing him to take these anti-psychotic medications, the defendants are forcing plaintiff to renounce and abandon his "religiously based parapsychological beliefs, opinions, and ideas[,]". (See Dkt. # 1, Pg ID, 13). Plaintiff indicates several times in his complaint that the defendants are doing this because they believe he is a danger to himself and to others. Plaintiff claims that the defendants only did this after he requested medical intervention for back pain. Plaintiff alleges that there was no basis for the defendants to involuntarily medicate him.

Plaintiff, however, as attached to his complaint numerous exhibits that indicate that plaintiff was only placed into the CMHP and prescribed medication after hearings were

conducted before hearing committees for the CMHP. (See Dkt. # 1, Pg ID 98-105, 106-118, 120-28, 132-47). These reports contained physician's certificates indicating that plaintiff was interviewed by psychiatrists or other mental health professionals. The reports also contained a Qualified Mental Health Professional Evaluation (QMHP) which also contained a history of plaintiff's mental illnesses. The reports all indicate that plaintiff had a history of mental illness and had been prescribed psychiatric medications in the past. The reports indicate that plaintiff had a history of depression and suicide attempts. The reports indicate that plaintiff did not believe he suffered from any mental illness and refused to voluntarily take any anti-psychotic medications. The reports indicate that plaintiff lacks insight regarding his mental illnesses and needed to be treated medically. After reviewing these reports, the mental health committees found that plaintiff suffered from a mental illness that required a proposed plan of mental health service not to exceed ninety days.

One report indicated that plaintiff was delusional and agitated and believed that persons were trying to sexually assault him through their thoughts and that there was a conspiracy against him. Plaintiff also stated that others were using "mental projection" to engage in "shoot 'em up bang bang" which he explained as a method to stimulate his anus or genitals in order to engage in homosexual sex. The report indicates that plaintiff was suffering from paranoid thoughts that could lead him to be a danger to himself or others. This first report indicated also that plaintiff had a prior history of being placed on psychotropic medications. The report concluded that plaintiff likely suffered from a thought disorder in the schizophrenia spectrum disorders. It also indicated he had a prior history of depressive episodes and suicide attempts. (*Id.*, Pg ID 99-102).

A second report contained similar findings but also noted that plaintiff claimed that

his back pain was caused by "astral or mental projections" being used to "fuck him." It also indicated that plaintiff attempted suicide three times by hanging or drowning. The report indicated that plaintiff on his own would most likely discontinue taking his medications. The report indicated that plaintiff was continuing to suffer from paranoid and somatic delusions. (*Id.*, Pg ID 111-13).

A third report contains similar findings as the first two but also indicates that plaintiff has a history of visual hallucinations, i.e. seeing what he referred to as his "elders." In response to a question from the psychiatrist, plaintiff denied that it was psychotic for him to believe that persons could stimulate his genitals from a distance. Plaintiff indicated from his own "research" that he "used to say that it [the remote sexual assaults] was mental projection or spells or charms; now I know its metaphysical." (*Id.*, Pg ID 122). The report further indicated that plaintiff has a "fixed delusion that someone has inflicted physical pain upon him through their thoughts." (*Id.*, Pg ID 123).

Plaintiff appealed the findings of the mental health committees. His appeals were denied. (*Id.*, Pg ID 107-08, 119, 129, 148-49).

Plaintiff also attached his grievances that he filed and the Michigan Department of Corrections' [M.D.O.C.] responses to these grievances. The M.D.O.C. denied these various grievances because plaintiff had been evaluated by a licensed psychiatrist who determined that plaintiff was suffering from symptoms that justified medication for mental illness. (*Id.*, Pg ID 154, 163-64, 173, 176).

Plaintiff seeks monetary damages and injunctive relief.

IV. Discussion

Plaintiff's action is subject to dismissal for several reasons.

First, the complaint would be subject to dismissal, because plaintiff has failed to comply with the pleading requirements of Fed. R.Civ. P. 8. Fed.R.Civ.P. 8(a)(2) requires that a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief." This rule seeks "to avoid technicalities and to require that the pleading discharge the function of giving the opposing party fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved." *Chase v. Northwest Airlines Corp.*, 49 F. Supp. 2d 553, 563 (E.D. Mich.1999)(*quoting* Wright & Miller, Federal Practice and Procedure: Civil 2d § 1215). Similarly, Rule 8(e)(1) requires that "Each averment of a pleading shall be simple, concise, and direct." Plaintiff's complaint is subject to dismissal for failing to comply with the dictates of Fed. R. Civ. P. 8 (a). *See Echols v. Voisine*, 506 F. Supp. 15, 17-19 (E.D. Mich. 1981), *aff'd*, 701 F.2d 176 (6th Cir. 1982)(Table); *See also Payne v. Secretary of Treas.*, 73 F. App'x. 836, 837 (6th Cir. 2003)(affirming *sua sponte* dismissal of complaint pursuant to Fed.R.Civ.P. 8(a)(2); "Neither this court nor the district court is required to create Payne's claim for her.").

Secondly, a review of the documents and exhibits which plaintiff attached to his complaint shows that plaintiff is not entitled to relief.

An inmate "possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." *Washington v. Harper*, 494 U.S. 210, 221-22 (1990). However, "given the requirements of the prison environment, the Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest." *Id.*, at 227. Although an inmate's "interest in avoiding the unwarranted

administration of antipsychotic drugs is not insubstantial." *Id.* at 229, the Supreme Court opined that "[n]otwithstanding the risks that are involved, we conclude that an inmate's interests are adequately protected, and perhaps better served, by allowing the decision to medicate to be made by medical professionals rather than a judge." *Id.,* p. 231. The Supreme Court further indicated that "[t]hough it cannot be doubted that the decision to medicate has societal and legal implications, the Constitution does not prohibit the State from permitting medical personnel to make the decision under fair procedural mechanisms" without a judicial hearing. *Id.*

M.D.O.C. Policy Directive ("PD") 04.06.183 provides, in relevant part, that a prisoner may be temporarily subjected to involuntary treatment with psychotropic medication where the following conditions are met: "a psychiatrist's certificate [is] executed which states [that] the prisoner is mentally ill," the psychiatrist also concludes that the prisoner "is a present danger to himself or herself or to others;" "the prisoner refuses treatment;" and the psychiatrist orders "involuntary administration of psychotropic medication pending the convening of a Hearing Committee." *Id.* at (Q-R).

Before a hearing committee is convened, the inmate must be provided with a copy of the "Psychiatric Certificate, Psychiatric Report, QMHP11 Report, and a notice of hearing and rights to the prisoner and, if one has been appointed, to the guardian of the person." MDOC PD 04.06.183 at (S). The prisoner shall be assigned a Mental Health Advisor; the prisoner must not be medicated for twenty-four hours prior to the hearing. *Id.* at (T). The hearing committee must consist of "a psychiatrist, a fully licensed psychologist, and another mental health professional whose licensure or registration requirements include a minimum of a baccalaureate degree from an accredited college or university, none of whom is, at the

time of the hearing, involved in the prisoner's treatment or diagnosis." *Id.* at (C). The hearing committee must consider "the QMHP Report alleging that the prisoner is mentally ill, the Psychiatric Report, the Psychiatrist's Certificate, proof that a notice of hearing has been served, proof that the prisoner has not been medicated within 24 hours and any other admissible evidence presented at the hearing." *Id.* at (W). The prisoner has the right to attend the hearing, may bring along his or her guardian, and is entitled to the assistance of his or her mental health advisor. *Id.* at (X). The prisoner may present evidence, including witnesses, and may cross-examine witnesses. *Id.* The hearing committee must then "determine whether the prisoner is mentally ill and, if so, whether the proposed mental health services are suitable to the prisoner's condition. A finding of mental illness must be confirmed by the psychiatrist on the Hearing Committee to be valid." *Id.* at (Y). The committee must prepare an official record of the hearing, and must present to the prisoner a report of their findings and orders, along with an appeal form. *Id.* at (Z-AA). The initial period of treatment may not exceed ninety days. *Id.* at (AA).

The prisoner may appeal the hearing committee's decision to the Director of the Corrections Mental Health Program with the assistance of their mental health advisor; the prisoner may then appeal that decision to a state circuit court. *Id.* at (DD). The policy also provides for renewal of the medication order. *Id.* at (EE-FF). The prisoner is also entitled to a copy of the corrections mental health program guidebook which contains "rights information," and is to be offered an "opportunity to consult with staff from the Office of the Legislative Corrections Ombudsman." *Id.* at (GG).

The M.D.O.C.'s policy regarding the involuntary administration of psychotropic drugs is similar to the Washington state procedure that was upheld as valid in *Harper*. *Id.*, 494

U.S. at 233-35. A review of the documents that plaintiff has attached to his complaint shows that the defendants followed the procedures dictated under M.D.O.C. policy before he was involuntarily treated with medication. Plaintiff has thus failed to establish a due process violation.

A review of the various records attached also shows that plaintiff is suffering from serious mental illness that may make him dangerous to himself or to other persons. There is no due process violation in the involuntary administration of medicine to an inmate who suffers from a mental illness. *See e.g. Kramer v. Wilkinson*, 302 F. App'x. 396, 400 (6th Cir. 2008). Because the various records attached by plaintiff to his complaint clearly show that he suffers from a serious mental illness, the involuntary administration of medication to plaintiff does not violate his constitutional rights.

V. ORDER

IT IS HEREBY ORDERED that Plaintiff's civil rights complaint (Dkt. # 1) is **DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED** pursuant to 28 U.S.C. § 1915A(e)(2) and 28 U.S.C. § 1915(A).

IT IS FURTHER ORDERED that any appeal taken would not be done in good faith. See 28 U.S.C. § 1915(a)(3); *see also McGore v. Wrigglesworth*, 114 F.3d at 604.

SO ORDERED.

S/ Nancy G. Edmunds
HON. NANCY G. EDMUNDS
UNITED STATES DISTRICT JUDGE

Dated: March 28, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 28, 2018, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager

Appendix C

Orders of the United States Court of Appeals denying petition for rehearing and rehearing en banc, August 02, 17, 2022.

No. 20-1913

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 2, 2022
DEBORAH S. HUNT, Clerk

RUFUS SPEARMAN,

Plaintiff-Appellant,

v.

MARY PARSON, et al.,

Defendants-Appellees.

ORDER

Before: GRIFFIN, NALBANDIAN, and READLER, Circuit Judges.

Rufus Spearman, a pro se Michigan prisoner, petitions the court to rehear en banc its June 6, 2022, order denying his motion to proceed in forma pauperis on appeal. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix C

No. 20-1913

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 17, 2022
DEBORAH S. HUNT, Clerk

RUFUS SPEARMAN,

Plaintiff-Appellant,

v.

MARY PARSON, ET AL.,

Defendants-Appellees.

ORDER

Before: GRIFFIN, NALBANDIAN, and READLER, Circuit Judges.

Rufus Spearman, a pro se Michigan prisoner, petitions for rehearing en banc of this court's order entered on June 6, 2022, denying his motion to proceed in forma pauperis on appeal. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc. Unless Spearman pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix C

Appendix D

Order of the United States District Court denying motion for independent action relief from judgment, August 07, 2019.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUFUS LAMAR SAVIN SPEARMAN,

Plaintiff,

v.

MARY PARSON, ET. AL.,

Defendants,
_____/

Civil Action No. 2:18-CV-10673
HONORABLE NANCY G. EDMUNDS
UNITED STATES DISTRICT COURT

OPINION AND ORDER DENYING THE MOTION FOR AN INDEPENDENT ACTION RELIEF FROM JUDGMENT

Plaintiff Rufus Lamar Savin Spearman filed a *pro se* civil rights complaint pursuant to 42 U.S.C.§ 1983. This Court summarily dismissed the complaint pursuant to 28 U.S.C. § 1915A(e)(2) and 28 U.S.C. § 1915(A) because Plaintiff failed to state a claim upon which relief could be granted. *Spearman v. Parson,* No. 2:18-CV-10673, 2018 WL 1522439 (E.D. Mich. Mar. 28, 2018), *appeal dismissed*, No. 18-1393, 2018 WL 7960304 (6th Cir. Nov. 16, 2018), *cert. denied*, 139 S. Ct. 2622 (2019).

Plaintiff has now filed a request or motion for an independent action for relief from judgment. For the reasons that follow, the motion is DENIED.

"The 'indisputable elements' of an independent action for relief from judgment are: (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his [or her] defense; (4) the absence of fault or negligence on the part of the defendant; and the absence of any adequate remedy at law." *Mitchell v. Rees*, 651 F. 3d

Appendix D

593, 595 (6th Cir. 2011). More importantly, an independent action pursuant to Fed. R. Civ. P. 60 is "available only to prevent a grave miscarriage of justice." *Id.* (quoting *United States v. Beggerly*, 524 U.S. 38, 47 (1998)).

Plaintiff in his current motion claims that he has additional evidence in support of the earlier allegations that he raised in his complaint that various prison officials, psychiatrists, psychologists, or other mental health workers at several prisons had forced him against his will to enter the Corrections Mental Health Program (CMHP) and had forcibly medicated him with anti-psychotic medications, specifically Haldol. This Court summarily dismissed Plaintiff's case because his forty page complaint and one hundred and thirty pages of exhibits showed that Plaintiff is suffering from serious mental illness that may make him dangerous to himself or to other persons.

Plaintiff's current independent action is an attempt to relitigate his claims which this Court considered and rejected when summarily dismissing the original complaint. A party cannot use an "independent action" relief from judgment to relitigate issues that were finally determined in the prior action. *See Barrett v. Sec'y of Health & Human Servs.*, 840 F.2d 1259, 1266 (6th Cir. 1987). Accordingly, the Court denies the motion for an independent action relief from judgment.

Based on the foregoing, the motion for an independent action relief from judgment (Doc. 19) is DENIED.

s/ Nancy G. Edmunds
HON. NANCY G. EDMUNDS
UNITED STATES DISTRICT JUDGE

Dated: August 7, 2019

Appendix E

Constitutional and Statutory Provisions Involved.

Constitutional and Statutory Provisions Involved

This petition for a writ of certiorari involves Article I, Article VIII, and Article XIV in addition to and amendment of the Constitution of the United States of America; it also involves the Religious Land Use and Institutionalized Persons Act (42 U.S.C.S. § 2000cc), providing in relevant part as follows:

> Article [I] (amendment). Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
>
> Article [VIII] (amendment). Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
>
> Article [XIV], Section 1 (amendment). All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty,

Constitutional and Statutory Provisions Involved (continued)

or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article..

The Amendments are enforced by Title 42, Section 1983, United States Code Service:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Appendix E (two)

Constitutional and Statutory Provisions Involved (continued)

42 U.S.C.S. §2000cc-1(a). General rule. No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in Section 2 of the Civil Rights of Institutionalized Person's Act (42 U.S.C.S. §1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person -

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b.) Scope of application. This section applies in any case in which -

(1) the substantial burden is imposed in a program or activity that receives federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several states, or with Indian Tribes.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) is enforced by Title 42, Section 2000cc-2(a), United States Code:

Constitutional and Statutory Provisions Involved (continued)

(a.) Cause of action. A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution.