

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 26 2023

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

SANTOS CUEVAS,

Plaintiff-Appellant,

v.

KATE BROWN, Governor; et al.,

Defendants-Appellees.

No. 22-35638

D.C. No. 2:21-cv-01688-YY
District of Oregon,
Pendleton

ORDER

Before: WARDLAW, CLIFTON, and SANCHEZ, Circuit Judges.

The district court certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. On August 15, 2022, 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 responses to the August 15, 2022 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 5) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SANTOS CUEVAS,

Plaintiff,

v.

KATE BROWN, et al.,

Defendants.

HERNÁNDEZ, Judge.

Case No. 2:21-cv-01688-YY

ORDER

Plaintiff, an adult in custody at the Oregon State Penitentiary, brings this civil rights action *pro se*. On December 21, 2021, this Court issued an Order and Judgment dismissing this action pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Currently before the Court are Plaintiff's "Motion to Quash Dismissal, Set Aside Dismissal" (ECF No. 9) and Plaintiff's Motion for Reconsideration (ECF No. 10).

Under Federal Rule of Civil Procedure 59(e), a party may move to have the court amend its judgment within twenty-eight days after entry of the judgment. “Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). “But amending a judgment after its entry remains an extraordinary remedy which should be used sparingly.” *Id.* (internal quotation marks omitted). In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law. *Id.*

The moving party under Rule 60(b) is entitled to relief from judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason justifying relief from the operation of the judgment. *See Fed. R. Civ. P. 60(b); Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 898–99 (9th Cir.2001).

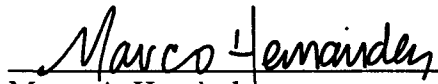
In his two motions, Plaintiff argues that the Court incorrectly dismissed his Complaint because the circumstances surrounding his state court conviction violated his constitutional rights. As stated in the Order to Dismiss, however, Plaintiff may not challenge his conviction or sentence in this § 1983 action. Plaintiff’s mere disagreement with this Court’s prior conclusion is an insufficient reason for the Court to reconsider the decision to dismiss Plaintiff’s Complaint.

CONCLUSION

For these reasons, the Court DENIES Plaintiff's "Motion to Quash Dismissal, Set Aside Dismissal" (ECF No. 9) and Motion for Reconsideration (ECF No. 10).

IT IS SO ORDERED.

DATED this 5 day of January, 2022.


Marco A. Hernández
Chief United States District Judge