

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

MAHLIK D. ELLINGTON,

Petitioner,

v.

WARDEN GREG GRAMS,
CAPTAIN RADTKE, Administrative Captain,
JANEL NICKEL, Security Director,

Respondents.

ORDER

07-C-007-C

On January 30, 2007, I denied petitioner Mahlik D. Ellington's request for leave to proceed in forma pauperis on his Eighth Amendment claim that from September 22, 2006, until November 16, 2006, he was made to sleep on a mattress on the floor near a toilet in an overcrowded prison. Judgment was entered on that same day. Now petitioner has submitted a letter dated February 11, 2007 and postmarked February 12, 2007, which I construe as a timely filed motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. Because I remain convinced that it was not legal error to find that petitioner's Eighth Amendment claim is legally meritless, the Rule 59 motion will be denied.

The purpose of a Rule 59 motion is to bring the court's attention to newly discovered evidence or to a manifest error of law or fact. E.g., Bordelon v. Chicago School Reform Bd.

of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case, Neal v. Newspaper Holdings, Inc., 349 F.3d 363, 368 (7th Cir. 2003), or to present evidence that could have been presented at an earlier time. Dal Pozzo v. Basic Machinery Co., Inc., 463 F.3d 609, 65 (7th Cir. 2006). In order to obtain relief under Rule 59, the movant must “clearly establish” his or her grounds for relief. Romo v. Gulf Stream Coach, Inc., 250 F.3d 1119, 1122 n.3 (7th Cir. 2001).

In his Rule 59 motion, petitioner describes his current conditions of confinement and his mental health problems. None of these matters were raised in his complaint. The only comment he makes in his motion relating to the Eighth Amendment claim he raised in his complaint is that while he was being forced to sleep on a mattress on the floor, there were empty cells available for him to occupy. Even with this clarification, however, his sleeping conditions did not result in the sort of “extreme deprivations” against which the Eighth Amendment protects.

Petitioner has failed to show that either new evidence or a manifest error of law or fact justify amending the judgment entered in this case. Consequently, petitioner’s Rule 59 motion must be denied. If petitioner wishes to raise in this court claims relating to his present conditions, he will have to do so in a new lawsuit.

ORDER

IT IS ORDERED that petitioner Mahlik D. Ellington’s motion under Fed. R. Civ. P.

59 is DENIED.

Entered this 15th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge