

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

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JAMES J. KAUFMAN,

Plaintiff,

v.

GARY R. McCAUGHTRY and  
JAMYI WITCH,

Defendants.

ORDER

03-C-027-C

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On March 23, 2006, I granted defendants' motion for summary judgment in this case. Judgment of dismissal was entered the following day. Now plaintiff has filed a document titled "Motion for Reconsideration," which he dated April 10, 2006. Because plaintiff is objecting to certain factual findings I made in deciding the motion for summary judgment and challenging the merits of the decision, I construe his motion as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

Motions pursuant to Rule 59 must be made within ten days of the date of entry of the judgment in a case, and Fed. R. Civ. P. 6(b) explicitly precludes enlargement of the time for filing Rule 59(e) motions. Ten days from the March 24, 2006 date of entry of the

judgment in this case was April 7, 2006. Even assuming that plaintiff delivered his motion to prison authorities for mailing on April 10 when he signed the motion, see Houston v. Lack, 487 U.S. 266 (1988) (pro se prisoner's filing deemed timely if delivered to prison officials within applicable time limit), the motion is too late. (The weekends of March 25 and 26, 2006 and April 1 and 2, 2006 are not counted in calculating the 10-day period.) Because plaintiff missed the deadline for filing his Rule 59 motion, he is precluded from filing such a motion at this or any other future time.

Plaintiff's untimely motion does not have the effect of extending the period for filing his notice of appeal. Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264-65 (1978) (untimely motions filed under Fed. R. Civ. P. 59 do not extend the time for appeal). Therefore, if plaintiff intends to appeal from the judgment entered in this case, he has thirty days from March 24, 2006, or until April 24, 2006, in which to file his notice of appeal.

#### ORDER

IT IS ORDERED that plaintiff's motion to alter or amend the judgment entered

in this case pursuant to Fed. R. Civ. P. 59 is DENIED as untimely.

Entered this 18th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge