IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TYLON C. CHRISTIAN,

Petitioner,

v.

DOUGLAS TIMMERMAN, KATHERINE DAYTON, NEIL LANE, DENISE SYMDON, MARCIA GOODWIN, and CAROLE BRIONES,

Respondents.

ORDER

03-C-688-C

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I dismissed this case on December 31, 2003, because petitioner had failed to state a claim upon which relief may be granted. Petitioner later filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59, which I denied in an order dated January 26, 2004. On February 2, 2004, petitioner filed a notice of appeal. Because petitioner did not accompany his notice with the $255 fee required for filing an appeal, I construed his notice of appeal as including a motion for leave to proceed on appeal in forma pauperis. I denied his motion because I concluded that his appeal was not taken in good faith.

Now, petitioner has filed a "Motion under Fed. R. Civ. P. 60(b)" and a "Motion under Fed. R. Civ. P. 59." In his Rule 60 motion, plaintiff argues that the court has

"misinterpreted" his claim under 42 U.S.C. § 1983. In his Rule 59 motion, petitioner asks the court to reconsider its decision that his appeal was not taken in good faith.

Generally, the timely filing of a notice of appeal deprives the district court of jurisdiction over the case, Boyko v. Anderson, 185 F.3d 672, 674 (7th Cir. 1999), or at least over those aspects of it that are involved in the appeal, Union Oil Co. of California v. Leavell, 220 F.3d 562, 566 (7th Cir. 2000). There is an exception to this rule; the court of appeals has held that a district court retains jurisdiction to *deny* a motion under Rule 60(b) because "a denial [will] not alter the judgment that [is] under appeal and thus [is] no threat to the appellate process." Williamson v. Indiana University, 345 F.3d 459, 462 (7th Cir. 2003). Because petitioner has not shown that he has satisfied any of the criteria for obtaining relief from judgment under Rule 60(b), his motion is DENIED. Petitioner's "new information" is nothing more than a reargument of points I have considered in previous orders.

Further, if petitioner believes this court erred in requiring him to pay a filing fee for his appeal and for certifying that the appeal was not taken in good faith, he may argue the matter directly with the Court of Appeals for the Seventh Circuit using the procedure set out in Fed. R. App. P. 24. There is no procedure available to him that would permit his

rearguing the matter in this court.

Entered this 24th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge