IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHI CA UNG,

Plaintiff,

ORDER

v.

06-C-494-C

HARLEY LAPPIN, Director,
Federal Bureau of Prisons;
PETER NALLY, Regional Director,
North Central Region, Federal Bureau of Prisons,
RICARDO MARTINEZ, Warden, FCI-Oxford, WI,

Defendants.

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In an order dated January 29, 2007, I granted defendants' motion to dismiss this case for plaintiff's failure to exhaust his administrative remedies. Judgment was entered the same day. Now, plaintiff has filed a motion for reconsideration of the order granting dismissal.

There is no rule in the Federal Rules of Civil Procedure addressing motions for "reconsideration." Rather, a party seeking reconsideration of the order disposing of the case or the judgment may file one of two kinds of motions in the district court: a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), or a motion for relief from the judgment or order pursuant to Fed. R. Civ. P. 60. The purpose of a Rule 59 motion is to

direct the court's attention to newly discovered evidence or to a manifest error or law or fact. E.g., Bordelon v. Chicago School Reform Bd. of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). Rule 60 provides relief when the judgment includes a clerical mistake, when new evidence is discovered or when the judgment was obtained through fraud. Legal error is not a proper ground for relief under Rule 60. Gleash v. Yuswak, 308 F.3d 758, 761 (7th Cir. 2002). Because plaintiff argues only that the dismissal is an incorrect application of the law, Rule 59 applies.

A party bringing a motion under Rule 59(e) must do so within 10 days after judgment is entered. Judgment was entered in this case on January 29, but plaintiff's motion is dated February 20, almost two weeks past the February 8 deadline. Accordingly, I must deny plaintiff's motion as untimely.

However, even if plaintiff's motion had been timely, I could not have granted it. Plaintiff's primary argument is that reconsideration is appropriate in light of Jones v. Bock, 127 S. Ct. 910 (2007), a case that the Supreme Court decided several days before I issued the order dismissing this case and which I cited in the order. The Court decided three issues: (a) exhaustion is an affirmative defense under the Prison Litigation Reform Act; (b) the PLRA does not prescribe a "total exhaustion" rule, meaning that the law does not require dismissal of all claims if some claims are exhausted but others are not; (c) the PLRA does not require dismissal of defendants who were not named in the prisoner's grievances.

None of these holdings helps plaintiff. This court has followed the rules set forth in Jones long before that case was decided. The Court's opinion did not change any law within this circuit. In any event, none of the rules applies in this case. First, plaintiff brought only one claim, so the Court's rejection of the total exhaustion rule has no bearing on this case. Second, it does not matter which party had the burden to prove or disprove exhaustion because plaintiff admits that he did not file any grievances. Finally, because plaintiff filed no grievances, a rule about naming defendants in grievances is irrelevant to plaintiff's case.

Plaintiff's other argument is that the court should make an exception to the exhaustion rule, but as I explained in January 29 order, the PLRA prohibits courts from making exceptions for exhaustion. The case that plaintiff cites, Gonzalez v. O'Connell, 355 F.3d 1010 (7th Cir. 2004), was not governed by the PLRA because it was not a case about prison conditions.

Finally, plaintiff includes more arguments about the merits of his case. Because

plaintiff has not exhausted his administrative remedies, I may not consider these arguments.

ORDER

IT IS ORDERED that plaintiff Chi Ca Ung's motion for reconsideration is DENIED.

Entered this 12th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge