

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

RICHARD S. KERR, JR.,

Plaintiff,

v.

PATRICK J. MADDEN, Circuit Court Judge
for Iron County, JOHN P. ANDERSON, Circuit
Court Judge for Bayfield County and MARTIN J. LIPSKE,
District Attorney for Iron County, sued in their individual
and official capacities,

Defendants.

ORDER

08-cv-122-bbc

Plaintiff Richard Kerr, a private citizen, filed this action on February 27, 2008 when he paid the \$350 filing fee. In his complaint, plaintiff attempted to sue two judges and a district attorney under federal criminal statutes for failing to provide him with 241 days' credit on a sentence it appeared he was no longer serving. I dismissed the case sua sponte on April 2, 2008, after concluding that this court was without authority to grant plaintiff the relief he was seeking, in particular, enforcement of criminal statutes against the defendants and money damages for actions the defendants allegedly took in the course of sentencing him. I noted that even if I could consider plaintiff's complaint as one filed under 42 U.S.C.

§ 1983, he cannot recover money damages from the defendants for two reasons: 1) the defendants are immune from suits for money damages; and 2) claims for money damages for alleged illegal incarceration are barred by Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), until the plaintiff can show that his conviction or sentence has been overturned. Judgment of dismissal was entered on April 3, 2008.

On April 18, 2008, plaintiff filed a document titled “Motion for Reconsideration and/or Motion for Certification for Appeal.” I construe the document as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

Under Fed. R. Civ. P. 59, a motion to alter or amend the judgment must be filed within ten days of the date of entry of the judgment. Saturdays and Sundays are excluded from the calculation, Fed. R. Civ. P. 6(a), and three days are added for service by mail, Fed. R. Civ. P. 6(e). Thus, plaintiff’s motion is timely. However, the purpose of a Rule 59 motion is to bring to the court’s attention newly discovered evidence or 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, 615 (7th Cir. 2006). Plaintiff’s arguments in support of his Rule 59 motion are simply a rehash of his earlier arguments that defendants wrongly deprived him of 241 days’

sentencing credit. The “evidence” attached to his motion showing that he failed in his attempt to bring John Doe proceedings against the defendants in the Circuit Court for Iron County, Wisconsin is not newly discovered evidence that could not have been presented earlier. Even if it were, it would be insufficient to show that it was error to dismiss his action in this court. Moreover, plaintiff’s assertion in his motion that he is presently under supervised release and thus “in custody” does not change the fact that Heck bars his claim for money damages to compensate him for defendants’ failure to credit him with 241 days of jail. Indeed, what it means is that plaintiff is still free to bring a habeas corpus action in state court to challenge the collateral effects of his alleged illegal custody on the duration of his time under supervised release.

Plaintiff suggests that he wants “certification for appeal” if his motion for reconsideration is denied. However, because this is not a habeas corpus action, plaintiff does not need certification from this court in order to take an appeal. He is free to file a notice of appeal and pay the \$455 fee for filing an appeal any time within thirty days of the date of this order. Averhorst v. Arrendondo, 773 F.2d 919, 920 (7th Cir. 1985). (If plaintiff believes he qualifies for pauper status on appeal, he is free to file with his notice of appeal a request for leave to proceed in forma pauperis and a sworn statement of his assets and debts so that the court can rule on his request.)

ORDER

IT IS ORDERED that plaintiff's motion pursuant to Fed. R. Civ. P. 59 is DENIED. Plaintiff's motion that the court provide certification for an appeal is DENIED as unnecessary. If plaintiff wishes to appeal from the judgment of dismissal and this court's order denying his Rule 59 motion, he is free to file a notice of appeal within thirty days of the date of this order that is accompanied by the \$455 filing fee or a request for leave to proceed in forma pauperis.

Entered this 23rd day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge