

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

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KEITH A. JURAK,

Plaintiff,

v.

DEPUTY KOSMOSKY,

Defendant.  
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ORDER

09-cv-419-bbc

In this lawsuit brought pursuant to 42 U.S.C. § 1983, plaintiff Keith Jurak claimed that defendant Deputy Kosmosky violated his rights under the Eighth Amendment by using excessive force against him during a cell search. In an April 19, 2010 order, I granted defendant's motion for summary judgment after noting that plaintiff failed to respond to the motion; documents sent to both his last known address, the Columbia Correctional Institution, and a forwarding address provided by the prison were returned as undeliverable. Judgment was entered on April 21, 2010.

Now plaintiff has filed a motion to reopen the case, which I will construe as a motion for relief from judgment under Fed. R. Civ. P. 60(b). Rule 60(b) permits a court to relieve a party from a final judgment, order or proceeding because of "mistake, inadvertence,

surprise, or excusable neglect," "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial" or "any other reason that justifies relief." Plaintiff wants to reopen the case because he did not receive defendant's motion for summary judgment until after plaintiff's deadline for a response had passed.

I will deny plaintiff's motion for two reasons. First, a Rule 60(b) motion must be made "within a reasonable time." Fed. R. Civ. P. 60(c)(1). Plaintiff does not explain why he waited more than six months to file his Rule 60 motion. Second, he fails to show that there would be a different outcome if the case were reopened. If plaintiff wishes to renew his motion to reopen the case, he should submit an affidavit explaining why it was reasonable for him to wait more than six months to file his Rule 60 motion, together with his materials in opposition to defendant's motion for summary judgment. To ensure that plaintiff is capable of responding to the motion, I will attach to this order another copy of the court's procedures to be followed in briefing summary judgment motions, as well as copies of defendant's summary judgment materials, dkt. ##24-28, and the court's April 20, 2010 order granting defendant's motion for summary judgment, dkt. #32.

#### ORDER

IT IS ORDERED that plaintiff's motion for relief from judgment, dkt. #34, is DENIED. Should plaintiff choose to renew his motion, he should submit additional

materials as outlined in this order.

Entered this 22d day of November, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge