NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 08-2459

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RICHARD TERRY HEIT, named as Richard T. Heit on behalf of himself and all persons similarly situated, et al.,

Plaintiffs,

ERIC MARTIN,

Movant-Appellant,

v.

MICHIGAN DEPARTMENT OF CORRECTIONS, jointly and severally; MARJORIE VAN OCHTEN, in her official and individual capacity, jointly and severally; RICHARD STAPLETON, in his official and individual capacity, jointly and severally; THOMAS P. D'HAEM; LEN DENHOUTER; ALICE FLORIDA; BILL MARTIN, Director; DAN BOLDEN,

Defendants-Appellees.

FILED
Nov 17, 2010
LEONARD GREEN, Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

O R D E R

Before: KEITH, SILER, and COLE, Circuit Judges.

Eric Martin, a pro se Michigan prisoner, appeals a district court order denying relief requested in a document that the district court construed as his objections to a class settlement that was concluded in January 2001. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On July 14, 2008, Martin filed a document with the district court under the caption and case number of a class action that had been closed since 2001. Martin alleged in that document that despite settlement in the prior class action, the Michigan Department of Corrections (MDOC) continued to unconstitutionally find him guilty of misconduct charges. Martin alleged that the guilty findings were made in the "absence of a preponderance of evidence." A magistrate judge rejected the pleading, finding that Martin was not a party to the original action and that the original class action was closed on January 8, 2001.

Martin filed objections to the magistrate judge's decision rejecting the filing of his document. Instead of referring the objections to the district court judge, the magistrate judge overruled Martin's objections. Martin then sent a letter to the chief district judge complaining that the magistrate judge should not have overruled his objections. Chief Judge Maloney conducted a de novo review of the magistrate judge's original decision. Chief Judge Maloney issued an order agreeing with Martin that the magistrate judge should not have ruled on Martin's objections and that such review was the responsibility of a district court judge. The judge concluded that although Martin was in fact a member of the original class, Martin's objections to the proposed settlement were untimely. Judge Maloney noted that Judge Enslen, who presided over the original class action, had previously rejected objections similar to those raised in Martin's document, and denied Martin's objection.

In his timely appeal, Martin argues that the district court's decision was arbitrary and ignored his due process rights. He requests that the class action be reopened and that the case remain open so long as MDOC continues to practice "their unlawful, unfair custom of finding prisoners guilty [of misconduct charges] in the absence of sufficient evidence." He also requests that all his misconduct tickets be overturned.

To the extent that Martin's motion can be construed as objecting to the proposed settlement, the objections are untimely. *See Jones v. Caddo Parish Sch. Bd.*, 735 F.2d 923, 926-27 (5th Cir. 1984) (noting that a request to intervene in a class action proceeding was untimely because the

motion was filed after the time to file objections had expired). The deadline for objecting to the settlement agreement was August 11, 2000.

If the motion is construed as being brought under Fed. R. Civ. P. 60(b), the decision is reviewed for an abuse of discretion. *See Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 385 (6th Cir. 2001). An abuse of discretion exists when the reviewing court has a "'definite and firm conviction that the trial court committed a clear error in judgment.'" *See Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006) (quoting *Amernational Indus., Inc. v. Action-Tungsram, Inc.*, 925 F.2d 970, 975 (6th Cir. 1991)). An appeal of a denial of a Rule 60(b) motion does not bring up the underlying order for review. *Browder v. Dir., Dep't of Corr.*, 434 U.S. 257, 263 n.7 (1978); *Amernational Indus., Inc.*, 925 F.2d at 975.

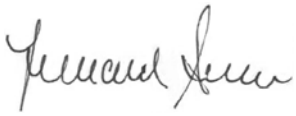
The district court issued its judgment in the class action case on January 8, 2001. Martin did not file his document until July 14, 2008. Any motion filed under Rule 60(b)(1), (b)(2), or (b)(3) must be filed within one year of the entry of the district court's judgment. Fed. R. Civ. P. 60(c)(1). Therefore, Martin's motion cannot be deemed timely if construed under these provisions.

Construing the motion under Rule 60(b)(6) also fails to provide Martin an avenue for relief. Motions seeking extraordinary relief under Rule 60(b)(6) must be brought within a reasonable amount of time after judgment, which has been interpreted to depend on the factual circumstances of each case. *Thompson v. Bell*, 580 F.3d 423, 443 (6th Cir. 2009), *cert. denied*, _ S. Ct. _, 2010 WL 1922716 (U.S. Oct. 4, 2010) (No. 09-1373). A trial court's discretion to grant relief under this Rule is especially broad given the underlying equity principles involved. *McDowell v. Dynamics Corp. of Am.*, 931 F.2d 380, 383 (6th Cir. 1991). Martin waited over seven and one-half years from the district court's judgment to file his motion. This is not a reasonable time in which to seek relief under Rule 60(b)(6). *See Blue Diamond Coal Co. v. Trustees of UMVA Combined Benefit Fund*, 249 F.3d 519, 528-29 (6th Cir. 2001) (district court abused discretion by granting Rule 60(b)(6) motion filed four years after judgment); *Ingram v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 371 F.3d 950, 952 (7th Cir. 2004) (Rule 60(b)(6) motion filed four and one-half years after approval of settlement stipulation in class action was

untimely). Therefore, Martin's motion construed under Rule 60(b)(6) cannot be deemed to be timely filed.

Accordingly, we affirm the district court's order. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT



Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Clerk

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Filed: November 17, 2010

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Re: Case No. 08-2459 , *Richard Heit v. MDOC, et al*
Originating Case No. : 96-00800

Dear Sir ,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Louise Schwarber
Case Manager
Direct Dial No. 513-564-7015
Fax No. 513-564-7096

cc: Mr. Ronald C. Weston

Enclosure

Mandate to issue