

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

February 16, 2012

Lyle W. Cayce  
Clerk

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No. 11-20481  
Summary Calendar

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JESUS JAIME JIMENEZ,

Plaintiff-Appellant

v.

LETICIA GARCIA MCQUEEN; SIGIFREDO SANCHEZ; EVA SHIVER;  
BRENDA CHANEY; RAYMOND LUNA; ROCKY MOORE,

Defendants-Appellees

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:11-CV-1277

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Before GARZA, SOUTHWICK and HAYNES, Circuit Judges.

PER CURIAM:\*

Jesus Jaime Jimenez, Texas prisoner # 01363409, filed a 42 U.S.C. § 1983 lawsuit against a correctional officer and several employees of the Texas Department of Criminal Justice for allegedly violating his due process rights by housing him in administrative segregation since 2007. The district court dismissed the case under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) as frivolous and for failure to state a claim on which relief may be granted. The court denied

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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“reconsideration” under Federal Rule of Civil Procedure 60(b)(6). *See Harcon Barge Co. v. D & G Boat Rentals, Inc.*, 784 F.2d 665, 667 (5th Cir. 1986) (en banc). We AFFIRM.

Jimenez’s notice of appeal was untimely as to the judgment dismissing his case despite his reliance on the district court’s unauthorized extension of time to file his post-judgment motion. *See* 28 U.S.C. § 2107(a); FED. R. CIV. P. 6(b); FED. R. APP. P. 26(b); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The notice was timely as to the order disposing of his Rule 60(b) motion, and we liberally construe the notice of appeal and his brief in this court as challenging that ruling. *See Trust Co. Bank v. U.S. Gypsum Co.*, 950 F.2d 1144, 1148 (5th Cir. 1992); *Mapes v. Bishop*, 541 F.3d 582, 584 (5th Cir. 2008).

Because we must recast this appeal as one that solely challenges the denial of a Rule 60(b)(6) motion, our review is for whether the district court abused its discretion by denying the motion. *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1408 (5th Cir. 1994).

Jimenez complains that he had procedural rights that were not provided him. Before any process is due, the prisoner must have “a liberty interest that the prison action implicated or infringed.” *Richardson v. Joslin*, 501 F.3d 415, 418 (5th Cir. 2007) (internal quotation marks and citation omitted). Jimenez argues that the district court should not have dismissed his lawsuit. His complaint, though, failed to allege sufficient factual matter, accepted as true, to state a claim that is plausible on its face that his placement in administrative segregation “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009).

We have previously rejected an argument that Texas created a liberty interest regarding placement in administrative segregation by promulgating its Administrative Segregation Plan. *Richardo v. Kinker*, 73 F.3d 612, 613 (5th Cir.

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1996); *Fultz v. Collins*, No. 92-5214, 1993 WL 347283, at \*4 (5th Cir. Aug. 20, 1993) (per curiam); see also 5TH CIR. R. 47.5.3. Jimenez relies on *Hewitt v. Helms*, 459 U.S. 460 (1983), but the Supreme Court has abrogated *Hewitt's* methodology. *Wilkinson v. Austin*, 545 U.S. 209, 222-23 (2005). Jimenez's argument that his placement in administrative segregation limits his opportunity to participate in certain time-earning programs fails. *Malchi v. Thaler*, 211 F.3d 953, 958-59 (5th Cir. 2000).

Jimenez has failed to show that the denial of his Rule 60(b)(6) motion for relief from the judgment dismissing his lawsuit was so unwarranted as to constitute an abuse of discretion. *Liljeberg Enters., Inc.*, 38 F.3d at 1408.

AFFIRMED.