

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41094
Conference Calendar

ALFREDO DARIO MARZO,

Plaintiff-Appellant,

versus

UP STRAINE, Captain, and
UP WALKER, Officer,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:92-CV-77
- - - - -

(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Alfredo Dario Marzo has applied for leave to proceed in forma pauperis ("IFP") on appeal from the denial of his motion seeking reinstatement of the action, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. "To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous." Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986). Marzo has filed an affidavit showing that he is a pauper.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

"Motions under Rule 60(b) are directed to the sound discretion of the district court, and its denial of relief upon such motion will be set aside on appeal only for abuse of that discretion." Carimi v. Royal Caribbean Cruise Line, Inc., 959 F.2d 1344, 1345 (5th Cir. 1992) (internal quotations omitted). "[A]ppellate review of the denial of such a motion must be narrower in scope than review of the underlying order of dismissal" Phillips v. Insurance Co. of N. Am., 633 F.2d 1165, 1167 (5th Cir. 1981) (internal quotations omitted). This Court "may not treat the appeal from the ruling on the rule 60(b) motion as an appeal from the [underlying order] itself." Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8 (5th Cir. 1991) (internal quotations omitted).

Under Rule 60(b)(6) the district court may relieve a party from a final judgment for any reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b). Motions under Rule 60(b)(6) must be brought within a "reasonable time." Id. What is a reasonable time "depends on the particular facts and circumstances of the case." Travelers Ins. Co. v. Liljeberg Enters., Inc., 38 F.3d 1404, 1410 (5th Cir. 1994). The magistrate judge did not abuse her discretion in concluding, under the facts of this case, that the motion was not filed within a reasonable time. Although Marzo has established that he has an ongoing medical condition and that he was medicated briefly in late 1992 and early 1993, he has not shown why he waited another year before filing his motion.

Marzo argues that he was not able to present his case effectively in the district court because he is a Cuban national and does not speak or write in the English language. He contends that the district court should have appointed counsel to represent him. Because the issue has been raised for the first time on appeal and does not involve a purely legal question, it is not reviewable. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Marzo has failed to present a nonfrivolous issue. The motion for leave to proceed IFP on appeal is DENIED. See Jackson, 811 F.2d at 261; Fed. R. App. P. 24(a). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.