

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Re: Case No. 14-2602, *Eric Dowdy, et al v. Patricia Caruso, et al*
Originating Case No. : 2:06-cv-11765

Dear Counsel and Mr. Favors:

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Amy E. Gigliotti for Jill Colyer,
Case Manager
Direct Dial No. 513-564-7042

cc: Mr. David J. Weaver

Enclosure

Mandate to issue

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 14-2602

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ERIC DOWDY, et al.,)	
)	
Plaintiffs,)	
)	
and)	
)	
GENE T. FAVORS,)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
Interested Party-Appellant,)	THE EASTERN DISTRICT OF
v.)	MICHIGAN
)	
PATRICIA CARUSO; DAVE BURNETT;)	
MICHAEL MARTIN,)	
)	
Defendants-Appellees.)	

ORDER

Before: SUHRHEINRICH, SUTTON, and COOK, Circuit Judges.

Gene T. Favors, a Michigan prisoner proceeding pro se, appeals a district court order denying his motion for relief from judgment, which Favors filed after the district court denied his motion to hold the defendants in civil contempt for violating a settlement agreement. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 2010, several Muslim inmates housed by the Michigan Department of Corrections (“MDOC”) filed an amended complaint on behalf of themselves and other similarly situated inmates. They alleged that former MDOC Director Patricia Caruso, former MDOC Special Activities Coordinator Dave Burnett, and MDOC Special Activities Coordinator Michael Martin failed to accommodate their requests to attend Jum’ah prayer services, receive a halal diet, and

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participate in Eid ul-Fitr and Eid ul-Adha Feasts. The case was certified as a class-action lawsuit, with the class defined, in relevant part, as “all current and future Michigan Muslim inmates who desire but have been denied . . . a *halal* diet that is free of contamination by foods considered haram,’ i.e., non-*halal* meats and/or vegetarian foods that have been ‘contaminated’ by coming into contact with such meats.”

The district court granted summary judgment in favor of the plaintiffs on their claims regarding the observation of the Eid feasts, and it ordered the defendants to allow the plaintiffs to participate in those feasts. Subsequently, the parties entered into a settlement agreement. In relevant part, the settlement agreement required MDOC to “provide a religious meal that comports with *halal* tenets and satisfies basic nutritional requirements applicable to all prisoners.” In approving the settlement agreement, the district court noted that policies recently adopted by MDOC—“PD 05.03.150” and “OP5.03.150A”—“address[ed] the provision of religious meals to prisoners and set[] forth provisions for the preparation and service of said meals in conformity with Islamic religious requirements.” The district court stated that it would retain jurisdiction over the case to enforce the settlement agreement and punish violations of the court’s order.

Favors subsequently moved to hold the defendants in contempt for violating the settlement agreement. He alleged that MDOC denied his request for a halal or vegan diet and failed to provide an explanation for the denial. He stated that MDOC had recognized his Muslim faith for years and allowed him to participate in Muslim services and purchase religious items. Favors further alleged that the defendants violated Policy Directive 100.03.100, which requires MDOC to serve one hot meal per day; refused to provide hot water for coffee and oatmeal; and refused to allow prisoners to use microwaves. Finally, he contended that, when food service workers prepare halal food trays, they have pork on their gloves, which contaminates the halal meals that are served. Favors asked the court to order MDOC to determine whether he is entitled to a halal diet, place him on a halal diet, and award him \$10,000 in damages for each day that his constitutional rights were violated. The district court denied Favors’s motion to hold the defendants in contempt, finding that the relief that Favors sought was beyond the scope of the settlement agreement and that Favors had failed to exhaust the grievance process.

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Favors filed a motion for relief from judgment, arguing that he did not bear the burden of proving exhaustion and that there was no evidence in the record to support a finding that he had failed to exhaust his administrative remedies. The district court denied the motion, finding that MDOC provides a halal meal to prisoners who are approved for a halal diet, in compliance with MDOC Policy Directive 05.03.150 and as required by the settlement agreement. It determined that Favors's claim that he was denied approval to receive halal meals should be pursued through MDOC's grievance procedure and brought in a separate lawsuit once Favors exhausts his administrative remedies.

On appeal, Favors argues that the defendants retaliated against him and treated him differently than other similarly situated Muslim inmates by denying his requests of vegan meals without adequate explanation. He contends that the settlement agreement states that all prisoners are entitled to halal or vegan meals and that the district court retains jurisdiction for the purpose of enforcing the settlement agreement. He also argues that MDOC violated his due process rights by denying his requests for a vegan or halal diet without providing a hearing or a written explanation of its reasons for denying his requests. Favors has filed a motion to proceed in forma pauperis on appeal, which is unnecessary, because the district court granted Favors leave to appeal in forma pauperis. He has also filed a motion to appoint counsel.

As an initial matter, because Favors filed his motion for relief from judgment within twenty-eight days of the district court's order denying his motion to hold the defendants in contempt, the time for filing a notice of appeal was tolled until the district court ruled on the motion for relief from judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi). Thus, Favors's notice of appeal was timely with respect to both the district court's underlying judgment and the order denying his motion for relief from judgment.

We review a district court's decision on a civil contempt motion for an abuse of discretion. *Peppers v. Barry*, 873 F.2d 967, 968 (6th Cir. 1989). We also review a district court's denial of a Federal Rule of Civil Procedure 60(b) motion for relief from judgment for an abuse of discretion. *Thompson v. Bell*, 580 F.3d 423, 442 (6th Cir. 2009). An abuse of discretion occurs when the district court relies on clearly erroneous findings of fact or applies an erroneous legal standard. *Romstadt v. Allstate Ins. Co.*, 59 F.3d 608, 615 (6th Cir. 1995).

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The district court did not abuse its discretion by denying Favors's motion to hold the defendants in contempt or in denying his motion for relief from judgment. The settlement agreement clearly contemplated that it would be effectuated by the implementation of two newly created internal policies—PD 05.03.150 and OP 5.03.150A. Policy Directive 05.03.150 states that “[a] prisoner may eat from a religious menu only with approval of the [Correctional Facilities Administration] Special Activities Coordinator” and sets forth procedures for requesting such approval. In his contempt motion, Favors did not allege that MDOC wholly failed to provide Muslim prisoners with halal or vegan meals. In fact, his contention that he is being treated differently than other Muslim prisoners suggests that other Muslim prisoners are being provided with religious meals. Neither did he allege that MDOC was failing to implement Policy Directive 05.03.150. Again, it appears from his allegations that MDOC was enforcing the policy directive, as it agreed to do in the settlement agreement, by requiring Favors to seek approval before being provided with religious meals.

Although Favors's contention that the halal meals that were served were contaminated arguably falls within the scope of the settlement agreement, the district court lacked authority to grant the *relief* that Favors sought, namely, an order directing MDOC to accommodate him with a halal or vegan diet. By Favors's own admission, MDOC had already considered his request for a halal or vegan diet and determined that he was entitled to no such accommodation. And though Favors argues that due process requires MDOC to provide reasons for the denial, Policy Directive 05.03.150—and by extension the settlement agreement—include no such requirement. Consequently, the requested relief lies outside the settlement agreement and the denial of Favors's contempt motion fell within the district court's discretion.

Accordingly, Favors's motions to proceed in forma pauperis and to appoint counsel are **DENIED**, and the district court's orders denying the contempt motion and the motion for relief from judgment are **AFFIRMED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk