

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JOSHUA J. ROBERTSON,

Plaintiff,

v.

CASE NO. 07-3162-SAC

STATE OF KANSAS, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's motion (Doc. 49) for reconsideration and for relief from judgment. Plaintiff's motion asserts that he is seeking reconsideration of this Court's December 10, 2007 Order and Judgment dismissing this case, and of this Court's February 14, 2024 Memorandum and Order denying Plaintiff's motion for relief from judgment filed under Fed. R. Civ. P. 60(b)(4). In denying Plaintiff's Rule 60(b)(4) motion, the Court noted that Plaintiff has filed multiple similar motions that have been denied by this Court and affirmed on appeal. The Court also held in the Memorandum and Order that "[a]ny further attempts to raise previously-rejected arguments as the basis for a Rule 60(b) motion may be summarily denied." (Doc. 48, at 5.)

In his current motion, Plaintiff argues that the Court may revise its 2007 Order and Judgment under Fed. R. Civ. P. 54(b). Plaintiff argues once again that the defendants should have had the burden of proof on his underlying claims and that the Court's order dismissing this case was not a final judgment. (Doc. 49, at 2–3.) Therefore, he claims, the Tenth Circuit lacked jurisdiction and its decision on appeal is void for lack of jurisdiction. *Id.* at 3. Plaintiff argues

that this Court can revise its 2007 dismissal order and asks the Court to revise its December 10, 2007 Order and Judgment to show that Plaintiff has stated a claim for relief. *Id.* at 3–4.

The Court found in its Memorandum and Order denying Plaintiff’s most recent Rule 60(b) motion that the Tenth Circuit Court of Appeals has affirmed the Court’s dismissal of this case based on Plaintiff’s failure to state a claim. *See Robertson v. Kansas*, No. 08-3235, 301 F. App’x 786 (10th Cir. Dec. 5, 2008) (unpublished) (“the dismissal of Robertson’s complaint is **affirmed** for substantially the reasons stated in the district court orders dated December 10, 2007, and August 15, 2008”).

The Tenth Circuit has also held that the Court’s dismissal of this case did not render the judgment void; and upheld the Court’s denial of his previous Rule 60(b) motion. *Robertson v. Kansas*, 624 F. App’x 969, 970–72 (10th Cir. Aug. 13, 2015) (unpublished). In that ruling, the Tenth Circuit refused to address Plaintiff’s arguments regarding the merits of his claims, noting that “Robertson’s opportunity to directly attack the underlying judgment expired with his unsuccessful direct appeal.” *Id.* at n.2 (citing *see Robertson*, 301 F. App’x 786 (10th Cir. 2008) (unpublished), *see also V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224–26 (10th Cir. 1979) (distinguishing erroneous judgments subject to attack through direct appeals from void judgments subject to attack through Rule 60(b)(4))).

Plaintiff’s current motion is just another attempt to attack the Court’s 2007 dismissal of this case despite his unsuccessful direct appeal. The motion is denied as frivolous and duplicative. Any further motions based on arguments that have been rejected by this Court or by the Tenth Circuit Court of Appeals may be summarily denied. If Plaintiff continues to file frivolous motions in this closed case, the Court may consider filing restrictions.

IT IS THEREFORE ORDERED that Plaintiff's motion for reconsideration and relief from judgment (Doc. 49) is **denied**.

IT IS SO ORDERED.

Dated February 20, 2024, in Kansas City, Kansas.

S/ John W. Lungstrum
JOHN W. LUNGSTRUM
UNITED STATES DISTRICT JUDGE