

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted August 14, 2024*

Decided August 14, 2024

BeforeFRANK H. EASTERBROOK, *Circuit Judge*DAVID F. HAMILTON, *Circuit Judge*MICHAEL B. BRENNAN, *Circuit Judge*

No. 24-1003

MEGAN A. ROSENBAUM,
*Plaintiff-Appellant,**v.*STATE OF INDIANA,
*Defendant-Appellee.*Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

No. 1:23-cv-01729-JPH-MJD

James Patrick Hanlon,
*Judge.***ORDER**

Megan Rosenbaum appeals the dismissal of her complaint asserting that the State of Indiana violated her constitutional rights when she was arrested for, and ultimately convicted of, leaving the scene of an accident and driving under the

* The defendant-appellee was not served with process in the district court but filed a response brief in this court after we notified it of the appeal. We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. See FED. R. APP. P. 34(a)(2)(C).

influence. We have already limited this appeal to the district court's subsequent denial of Rosenbaum's "petition for rehearing," which the district court properly construed as a Rule 60(b) motion. Because the district court correctly denied that motion, which proposed changing the defendant to a state court judge, we affirm.

Rosenbaum left the scene of a minor accident and was arrested; her ensuing blood test was positive for cocaine. After a jury trial, which took place more than three years after the accident in part because of the COVID-19 pandemic, Rosenbaum was convicted of leaving the scene of an accident and driving under the influence. She was sentenced to 120 days in jail and her driver's license was suspended for one year.

After she completed her sentence and her license was restored, Rosenbaum filed this lawsuit, asserting that police, the Indiana state courts, and her trial counsel violated her constitutional rights. She said that the police unreasonably searched her and unlawfully drew her blood without her consent. She also pressed various theories of ineffective assistance of counsel and asserted that her right to a speedy trial had been violated. Finally, she said the appellate court violated her constitutional rights when it dismissed her direct criminal appeal after she failed to provide the correct trial transcripts. Despite raising claims about the acts of several individuals, Rosenbaum named only one defendant: the State of Indiana.

After construing the claims as arising under 42 U.S.C. § 1983, the district court dismissed the complaint under 28 U.S.C. § 1915A, concluding that the State of Indiana was not a person that could be sued under § 1983. The court gave Rosenbaum an opportunity to amend her complaint, but it dismissed the lawsuit with prejudice after she did not do so. The court issued the final judgment on October 31, 2023.

On December 4, Rosenbaum filed a "petition for rehearing." In it, she proposed substituting as the defendant one of the judges involved in her state criminal appeal. Because the petition was submitted more than 28 days after the judgment was entered, the district court construed it as a motion under Federal Rule of Civil Procedure 60(b). The court denied the motion, reasoning that Rosenbaum had not identified a ground for relief under Rule 60(b) and, in any event, the state court judge was immune from suit. Rosenbaum then filed a notice of appeal, and we determined that her appeal was timely only as to the denial of her post-judgment motion.

On appeal, Rosenbaum first challenges our order limiting the appeal to the denial of her post-judgment motion. She argues that the motion was filed within 28 days of the entry of judgment and so it should have been construed as a motion to

alter or amend the judgment under Federal Rule of Civil Procedure 59(e), which would have tolled the time to appeal, *see Krivak v. Home Depot U.S.A., Inc.*, 2 F.4th 601, 604 (7th Cir. 2021). She insists that Federal Rule of Civil Procedure 6(d) extended the 28-day period by three days because the final judgment was mailed to her. But Rule 6(d) does not extend the deadline for Rule 59(e) motions. *See Williams v. Illinois*, 737 F.3d 473, 475–76 (7th Cir. 2013). In the alternative, Rosenbaum says the district court should have considered the motion filed on the date she placed it in the mail (November 30), not the date it arrived at the court (December 4). But motions submitted by non-incarcerated litigants like Rosenbaum are considered filed when they are received by the clerk of the court, not when they are mailed. *See Raymond v. Ameritech Corp.*, 442 F.3d 600, 604–05 (7th Cir. 2006). Because the motion was received by the district court more than 28 days after judgment was entered, the court properly construed it as a motion under Rule 60(b). We therefore will not disturb our previous order limiting this appeal.

Next, Rosenbaum argues that the district court wrongly denied her request to substitute the appellate judge as the defendant. But the district court correctly concluded that the judge was immune from suit. Judges are immune from any claim for damages for judicial acts taken in their capacity as judges, unless they act “in the ‘clear absence of all jurisdiction.’” *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872)). In Rosenbaum’s motion, she complained about the delay in her criminal trial and the judge’s dismissal of her appeal. She did not explain, and we do not see, how those acts were non-judicial or how the judge would have acted without jurisdiction.

Nevertheless, Rosenbaum insists that *Ex parte Young*, 209 U.S. 123 (1908), allows her claims against the judge because she is also seeking injunctive relief: She is asking the federal court to vacate the state appellate court’s dismissal of her appeal. But though *Ex parte Young* allows some litigants to enjoin state officials from enforcing state laws that contradict federal laws, it does not allow such suits against judges for acting in cases before them. *Id.* at 163. Moreover, § 1983 bars injunctive relief against judicial officers for actions taken in their judicial capacities. Finally, we note that the proper way to seek federal collateral review of state-court rulings enforcing state custody is to petition for a writ of habeas corpus, *see* 28 U.S.C. § 2254; *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973), though such a petition was unavailable to Rosenbaum because she was no longer in custody at the time she filed her complaint, *see Stanbridge v. Scott*, 791 F.3d 715, 718 (7th Cir. 2015).

AFFIRMED