

BACKGROUND

In 1999, Mr. Segura was convicted in Oklahoma state court of first-degree murder and sentenced to life in prison without the possibility of parole. In 2002, he filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the Northern District of Oklahoma. After a series of fee-related delays, the district court denied the petition on July 14, 2008. Three months later, on October 15, 2008, Mr. Segura wrote to the district court requesting an order that would secure him access to the prison law library to enable him to respond to the denial of the habeas petition. Construing this as a petition for additional time to file a response, the district court denied his request as untimely on October 17, 2008.

More than seven months later, on May 27, 2009, Mr. Segura filed with the district court a “Motion for Reconsideration to Rehear Case.” Because it was filed too late to be a motion to alter or amend the October 17 order under Federal Rule of Civil Procedure 59(e), and because Mr. Segura did not reassert substantive habeas claims, *see Gonzalez v. Crosby*, 545 U.S. 524, 533–36 (2005), the district court construed the motion as a “true” Rule 60(b) motion for relief from the October 17 order. Finding that Mr. Segura did not meet any of the requirements of Rule 60(b), the district court denied relief in an order dated June 1, 2009.

The district court found that Mr. Segura had not demonstrated excusable neglect for his dilatoriness in seeking reconsideration of the October 17 order. *See* Fed. R. Civ. P. 60(b)(1). The determination of whether a party's neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). These circumstances include "the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* "[F]ault in the delay remains a very important factor—perhaps the most important single factor—in determining whether neglect is excusable." *United States v. Torres*, 372 F.3d 1159, 1163 (10th Cir. 2004) (quoting *City of Chanute v. Williams Natural Gas Co.*, 31 F.3d 1041, 1046 (10th Cir. 1994)). "An additional consideration is whether the moving party's underlying claim is meritorious." *Jennings v. Rivers*, 394 F.3d 850, 857 (10th Cir. 2005). Taking into account this substantive, merits-based consideration is a safeguard against frivolous litigation. *See id.* (citing *Cessna Fin. Corp. v. Bielenberg Masonry Contracting, Inc.*, 715 F.2d 1442, 1444–45 (10th Cir. 1983)). Likewise, "[a] court may take into account whether the mistake was a single unintentional incident (as opposed to a pattern of deliberate dilatoriness and delay)." *Id.*

Mr. Segura alleged before the district court that his inability to access the prison law library prevented him from responding in a timely manner to either the district court’s July 14, 2008, order denying habeas relief, or to the October 17, 2008, order denying his request for additional time to respond. Specifically, as to the October 17 order, Mr. Segura mentioned a prison “race war” and his placement in “segregation review” as the reasons why he was unable to access legal materials. R., Vol. I, at 202–03 (Mot. for Recons. to Rehear Case, filed May 27, 2009). Noting that Mr. Segura nonetheless acknowledged receiving the October 17 order on October 26, the district court found insufficient reason for Mr. Segura’s delay in the ensuing seven-month period. “Although Petitioner’s placement in segregation may have resulted in limited access to his facility’s law library, it does not constitute ‘excusable neglect’ for his failure to take prompt action upon receipt of the Court’s Order.” R., Vol. I, at 206 (Dist. Ct. Order, filed June 1, 2009).

After reviewing the record, we are convinced that the district court did not abuse its discretion in finding that Mr. Segura’s seven-month delay was not attributable to “excusable neglect” under Rule 60(b)(1). Likewise, none of the other sections of Rule 60(b) offer the prospect of relief for Mr. Segura.

CONCLUSION

Mr. Segura has not established that the district court abused its discretion in rejecting his claim of “excusable neglect,” and we therefore **AFFIRM** the

district court's judgment denying his Rule 60(b) motion. Mr. Segura's habeas case remains closed.

Entered for the Court

JEROME A. HOLMES
Circuit Judge