

ORDER denying [9](#) Motion for Reconsideration. Plaintiff moves this court for reconsideration pursuant to Fed. R. Civ. P. ("Rule") 60(b)(1), arguing the court "made mistakes, ignored documentary proof, and misconstrued plaintiffs" arguments. (ECF No. [9](#), Recons. Mot. 1-2.) Plaintiff has also filed a [8](#) notice of appeal, which normally divests the district court of jurisdiction to decide those issues raised on appeal. See *United States v. Camacho*, 302 F.3d 35, 36 (2d Cir. 2002). While a "district court may grant a Rule 60(b) motion after an appeal is taken only if the moving party obtains permission from the circuit court," it remains free to "entertain and deny the rule 60(b) motion" without such permission. See *Toliver v. Cty. of Sullivan*, 957 F.2d 47, 49 (2d Cir. 1992); see also Fed. R. Civ. P. 62.1(a) ("If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may... (2) deny the motion....").

First, Rule 60(b)(1) generally provides for relief based on the mistake, inadvertence, surprise or excusable neglect of the *parties*, not for mistakes by the court. See generally *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 387 (1993) (discussing concept of "excusable neglect" within context of "*party's* failure to comply with a court-ordered filing deadline"(emphasis added)). If plaintiff believes the court made a mistake in reaching its decision to dismiss his complaint, he can appeal its decision as he already has. Second, plaintiff's argument that the court mistakenly concluded "the fabricated bribery claim had little to do with [the trial] Courts decision" is contradicted by the record. (See, e.g., ECF No. [6](#), Order 16 ("[T]he financial incentive for Miata to recant his trial testimony remained and rendered the recantation unreliable. Indeed, the [trial] court found that the affidavit 'by itself' was incredible....").) This court concluded that the *source* of the bribery was not important to the trial court's decision, as the mere fact of bribery was sufficient to eviscerate Miata's credibility, and Popal's efforts to bolster that credibility would be futile. (*Id.* at 17.) Thus, the court's decision does not suffer from plaintiff's complained of errors, and he has failed to establish any grounds for relief under Rule 60. His motion is thus DENIED.

The court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith, and therefore *in forma pauperis* status is denied for purpose of an appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is respectfully directed to serve a copy of this Order on plaintiff at his address

of record. Ordered by Judge Kiyo A. Matsumoto on 7/26/2019. (Mazzurco, Vincent)  
(Entered: 07/26/2019)