

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 08-1850

Keith Brown El,

Appellant,

v.

Unknown Giessing; R/O Doe I;
Unknown Doe II, Sgt.; Unknown
Jackson, DHO; Unknown Murphy,
Nurse,

Appellees.

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* Appeal from the United States
* District Court for the
* Eastern District of Missouri.

* [UNPUBLISHED]

Submitted: February 11, 2010
Filed: February 17, 2010

Before RILEY, SMITH, and BENTON, Circuit Judges.

PER CURIAM.

Keith Brown El (Brown El), a Missouri inmate, moved to recall our mandate in this appeal, asserting this court incorrectly attributed to him “strikes,” within the meaning of 28 U.S.C. § 1915(g), for lawsuits that were filed by a different Missouri inmate, also named Keith Brown El. Because we have determined Brown El is correct, and he did not have three qualifying strikes at the time he filed the instant appeal, we grant his motion to recall the mandate in this appeal, and we reinstate our previous grant of in forma pauperis status.

Brown El appeals the district court's¹ dismissal without prejudice of his 42 U.S.C. § 1983 action. After careful review, we conclude the district court did not abuse its discretion in dismissing Brown's action without prejudice for failure to comply with the court's order directing him to file an amended complaint. See Smith v. Gold Dust Casino, 526 F.3d 402, 404-05 (8th Cir. 2008) (standard of review); Schooley v. Kennedy, 712 F.2d 372, 374 (8th Cir. 1983) (per curiam) (reasoning that a Federal Rule of Civil Procedure 41(b) dismissal is without prejudice and this militates against finding abuse of discretion). We also find no abuse of discretion in the denial of Brown El's Federal Rule of Civil Procedure 60(b) motion. See Int'l Bhd. of Elec. Workers v. Hope Elec. Corp., 293 F.3d 409, 415 (8th Cir. 2002) (stating the standard of review and explaining Rule 60(b) authorizes relief in only the most exceptional of cases). We affirm. See 8th Cir. R. 47B.

¹The Honorable Stephen N. Limbaugh, Sr., United States District Judge for the Eastern District of Missouri, now retired.