

APPENDIX 'A'

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 8 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL B. WILLIAMS,

Plaintiff-Appellant,

v.

STEPHEN MAYBERG,

Respondent-Appellee.

No. 17-17300

D.C. No. 3:03-cv-05147-MMC
Northern District of California,
San Francisco

ORDER

Before: BYBEE and BEA, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not shown “that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion and, (2) jurists of reason would find it debatable whether the underlying section [2254 petition] states a valid claim of the denial of a constitutional right.” *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2462 (2016); *see also* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (order).

Any pending motions are denied as moot.

DENIED.

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6 MICHAEL B. WILLIAMS,
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8 Petitioner,
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10 v.
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12 STEPHEN W. MAYBERG, et al.,
13 Respondent.

Case No. 03-cv-05147-MMC

**ORDER DENYING PETITIONER'S
THIRD MOTION FOR
RECONSIDERATION; DENYING
MOTION FOR APPOINTMENT OF
COUNSEL**

Re: Doc. Nos. 71, 72

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15 On November 21, 2003, petitioner, a civil detainee confined at Atascadero State
16 Hospital pursuant to California Welfare and Institutions Code § 6602, filed the above-
17 titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a
18 1991 state court conviction. On November 8, 2004, respondent's motion to dismiss the
19 petition as untimely was granted, judgment was entered in respondent's favor, and the
20 case was closed. This Court and the Ninth Circuit Court of Appeals thereafter denied
21 petitioner's request for a certificate of appealability.

22 Subsequently, petitioner filed in district court, a motion for reconsideration
23 pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, which was denied on April
24 27, 2007, after which ruling petitioner filed a request for a certificate of appealability,
25 which was denied by both this Court and the Court of Appeals.

26 Petitioner next filed a second motion for reconsideration pursuant to Rule 60(b),
27 which motion was denied on August 3, 2010, after which both this Court and the Court of
28 Appeals again denied petitioner's request for a certificate of appealability.

1 Now pending before the Court is petitioner's third motion for reconsideration of the
2 Court's 2004 order dismissing the petition as untimely. The instant motion was filed
3 October 6, 2017, and seeks relief pursuant to Rule 60(d)(1).

4 Petitioner's reliance on Rule 60(d)(1) is misplaced. Rule 60(d)(1) provides that
5 Rule 60 "does not limit a court's power to . . . entertain an independent action to relieve a
6 party from a judgment, order, or proceeding." Fed. R. Civ. P. 60(d)(1). Petitioner,
7 however, does not seek to file an independent action; rather he seeks relief from a prior
8 order issued in the same action he filed almost fourteen years ago.

9 Moreover, to the extent petitioner may be seeking leave to file an independent
10 action, it would be a second or successive petition pursuant to 28 U.S.C. § 2244(b)(2),
11 and the Ninth Circuit has denied petitioner's request to file a second or successive
12 petition. (See Doc. No. 57 (Order of USCA, filed Aug. 11, 2010).) To the extent
13 petitioner may be seeking relief pursuant to Rule 60(b), he has not, as previously
14 discussed by the Court in ruling on the prior motions for reconsideration, presented a
15 basis for reconsideration of the dismissal. (See Order Den. Mot. for Recons., filed Apr.
16 27, 2007, at 2:11-3:5; Order Den. Pet'r's Second Mot. for Recons., filed Aug. 3, 2010, at
17 2:23-3:4.)

18 In connection with his motion for reconsideration, petitioner also has filed a motion
19 for appointment of counsel. The Sixth Amendment right to counsel does not apply in
20 habeas actions, see Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986), but,
21 pursuant to statute, a district court is authorized to appoint counsel to represent a habeas
22 petitioner whenever "the court determines that the interests of justice so require," see 18
23 U.S.C. § 3006A(a)(2)(B), and such person is "financially unable to obtain adequate
24 representation," see id. § 3006A(a). Here, petitioner's claims have been adequately
25 presented in the petition and in his recent filings, and there is nothing before the Court to
26 suggest the interests of justice otherwise require the appointment of counsel.

27 Accordingly, petitioner's third motion for reconsideration and motion for
28 appointment of counsel are, in each instance, hereby DENIED.

1 Lastly, as petitioner has not shown "that jurists of reason would find it debatable"
2 whether the Court was correct in its ruling, see Slack v. McDaniel, 529 U.S. 473, 484
3 (2000), a certificate of appealability is hereby DENIED.

IT IS SO ORDERED.

5 Dated: October 24, 2017

Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge

United States District Court
Northern District of California

**Additional material
from this filing is
available in the
Clerk's Office.**