

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Edward Vincent Ray, Jr.

--PETITIONER

(Your Name)

vs.

UNITED STATES DISTRICT COURT OF
NORTHERN CALIFORNIA --RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPENDIX

A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 30 2018

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

EDWARD VINCENT RAY, Jr.,

Petitioner-Appellant,

v.

MATTHEW CATE,

Respondent-Appellee.

No. 18-15182

D.C. No. 4:10-cv-01582-YGR
Northern District of California,
Oakland

ORDER

Before: CLIFTON and CHRISTEN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) 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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B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD V. RAY,
Petitioner,
v.
MATTHEW CATE, Warden
Respondent.

Case No. 10-cv-01582-YGR (PR)

**ORDER DENYING MOTION FOR
RELIEF FROM A FINAL JUDGMENT
AND DENYING CERTIFICATE OF
APPEALABILITY**

This federal habeas corpus action, now closed, was filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. On June 6, 2013, the Court denied the federal habeas petition, declined to issue a Certificate of Appealability, and entered judgment in favor of Respondent. Dkts. 91, 92. The Ninth Circuit Court of Appeals affirmed the decision on July 8, 2016. Dkt. 105. The Ninth Circuit issued its mandate on August 2, 2016. Dkt. 106. Petitioner has filed a motion for relief from a final judgment pursuant to Federal Rule of Civil Procedure 60(b) in order to reopen the case. Dkt. 110.

Rule 60(b) lists six grounds for relief from a judgment. Such a motion must be made within a “reasonable time,” and as to grounds for relief (1) - (3), no later than one year after the judgment was entered. *See Fed. R. Civ. P. 60(b)*. Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason justifying relief. *Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Rule 60(b) provides a mechanism for parties to seek relief from a judgment when “it is no longer equitable that the judgment should have prospective application,” or when there is any other reason justifying relief from judgment. *Jeff D. v. Kempthorne*, 365 F.3d 844, 853-54 (9th Cir. 2004) (quoting *Fed. R. Civ. P. 60(b)*).

Because judgment was entered in 2013, this motion is untimely by many years. To the extent Petitioner's motion attempts to raise new grounds for habeas relief, it is tantamount to an

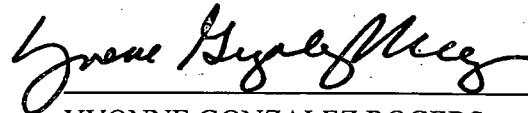
1 unauthorized second or successive habeas petition over which this Court lacks jurisdiction because
2 there is no proof showing that he obtained permission from the Ninth Circuit. *See* 28 U.S.C.
3 § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in
4 the district court, the applicant shall move in the appropriate court of appeals for an order
5 authorizing the district court to consider the application.")

6 Accordingly, Petitioner's motion for relief from a final judgment is DENIED. Dkt. 110.
7 Because reasonable jurists would not find the result here debatable, a certificate of appealability
8 ("COA") is DENIED. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000) (standard for COA).

9 This Order terminates Docket No. 110.

10 IT IS SO ORDERED.

11 Dated: January 23, 2018



12 YVONNE GONZALEZ ROGERS
13 United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD V. RAY,
Plaintiff

1

MATTHEW CATE,
Defendant.

Case No.10-cv-01582-YGR

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/23/2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Edward V. Ray, Jr. F73521
CTF North LA-A-220 Low
P.O. Box 705
Soledad, CA 93960

Dated: 1/23/2018

Susan Y. Soong
Clerk, United States District Court

By: Frances Stone
Frances Stone, Deputy Clerk to the
Honorable YVONNE GONZALEZ ROGERS

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No. 18-15182

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Northern District of California,
Oakland

ORDER

Before: McKEOWN and N.R. SMITH, Circuit Judges.

Appellant's petition for rehearing en banc (Docket Entry No. 4), which is construed as a motion for reconsideration en banc, is denied on behalf of the court.

See 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.