

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 29 2023

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

CLARENCE LEONARD HEARNS, Jr.,

Petitioner-Appellant,

v.

CAL TRAHUNE; BILL LOCKYER,
Attorney General, Attorney General of the
State of California,

Respondents-Appellees.

No. 22-55788

D.C. No. 2:00-cv-02044-PSG-JEM
Central District of California,
Los Angeles

ORDER

Before: BUMATAY and VANDYKE, Circuit Judges.

Appellant's motion for reconsideration en banc (Docket Entry No. 8) 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.

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ORDER

Before: RAWLINSON and OWENS, Circuit Judges.

Following this court's limited remand, the district court granted appellant's motion to reopen time to appeal under Federal Rule of Appellate Procedure 4(a)(6). Consequently, appellant's notice of appeal, filed on August 19, 2022, is deemed timely filed.

This appeal is from the denial of appellant's Federal Rule of Civil Procedure 60(b) motion. The request for a certificate of appealability 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); *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.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLARENCE LEONARD HEARNS, JR., } Case No. CV 00-2044-PSG (JEM)
Petitioner, }
v. } ORDER DENYING PETITIONER'S MOTION
CAL TRAHUNE, } FOR RELIEF FROM JUDGMENT AND
Respondent. } DENYING A CERTIFICATE OF
APPEALABILITY

Before the Court is Petitioner's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 60(b)(4) ("Motion"). (Dkt. No. 71.) For the reasons set forth below, the Motion is denied.

PROCEEDINGS

On February 28, 2000, Petitioner filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 ("Petition"). On May 13, 2002, the Court entered a final order and judgment dismissing the action as barred by the statute of limitations.¹

¹ Petitioner appealed the dismissal of this action. (Dkt. No. 41.) On November 19, 2003, the Ninth Circuit Court of Appeals issued an order denying Petitioner's request for a certificate of appealability. (Dkt. No. 51.)

1 On March 11, 2020, Petitioner filed a "Motion to Reopen Habeas Corpus Proceedings
2 (2254) pursuant FRCP 60(b)" ("First Rule 60 Motion"). On April 16, 2020, the Court entered
3 an order denying the First Rule 60 Motion ("First Denial Order"). The Court found that there
4 was no basis for vacating or reconsidering the judgment because, inter alia, Petitioner's
5 arguments were based on facts and information known to the Court and the parties at the time
6 the judgment was entered.

7 On April 30, 2020, Petitioner filed a "Motion to Amend Findings and Final Order" ("Rule
8 59 Motion"), in which he challenged the First Denial Order.

9 On October 7, 2020, the Court issued an order denying the Rule 59 Motion, finding that
10 Petitioner had failed to present any valid basis for the Court to reconsider the First Denial
11 Order. On January 8, 2021, the Court issued an order denying a certificate of appealability.

12 Petitioner appealed the orders denying the First Rule 60 Motion and the Rule 59
13 Motion. On November 6, 2021, the Ninth Circuit issued an order denying a certificate of
14 appealability.

15 On April 18, 2022, Petitioner filed the instant Motion challenging the May 13, 2002
16 judgment dismissing the Petition.

17 DISCUSSION

18 Under Rule 60(b), a court can relieve a party from a final judgment if the moving party
19 can show: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
20 evidence; (3) fraud or other misconduct; (4) a void judgment; (5) a satisfied or discharged
21 judgment; or (6) any other reason justifying relief from operation of the judgment. Fed. R. Civ.
22 P. 60(b); Gonzalez v. Crosby, 545 U.S. 524, 528-29 & n.2 (2005); Phelps v. Alameida, 569
23 F.3d 1120, 1131 n.12 (9th Cir. 2009). Rule 60(c) provides that "[a] motion under Rule 60(b)
24 must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year
25 after entry of the judgment"

26 In addition, "[i]n this district, motions for reconsideration are governed by Local Rule
27 7-18," Milton H. Greene Archives, Inc. v. CMG Worldwide, Inc., 568 F. Supp. 2d 1152, 1162
28 (C.D. Cal. 2008), which states:

1 A motion for reconsideration of the decision on any motion may be made
2 only on the grounds of (a) a material difference in fact or law from that
3 presented to the Court before such decision that in the exercise of
4 reasonable diligence could not have been known to the party moving for
5 reconsideration at the time of such decision, or (b) the emergence of new
6 material facts or a change of law occurring after the time of such decision,
7 or (c) a manifest showing of a failure to consider material facts presented
8 to the Court before such decision. No motion for reconsideration shall in
9 any manner repeat any oral or written argument made in support of or in
10 opposition to the original motion.

11 Local Rule 7-18 (emphasis added).

12 The original Petition was dismissed on May 13, 2002, based on the Court's finding that
13 it was barred by the statute of limitations. In the instant Motion, Petitioner argues that the case
14 should have been assigned to a different district judge and, therefore, the judgment is void.
15 He also asserts that he has meritorious claims challenging his underlying state conviction.
16 Petitioner fails to identify any mistake, intervening change in controlling law, failure to consider
17 material facts, or other factor that would warrant reconsidering or vacating the judgment. He
18 has not shown that the judgment is void or clearly erroneous or that manifest injustice resulted
19 from dismissal of the action in light of the applicable law. He has not presented any newly
20 discovered or previously unavailable evidence. Rather, Petitioner challenges the Court's case
21 assignment procedures in an attempt to re-open a matter that has been closed for nearly
22 twenty years. All of the issues presented by Plaintiff in the Motion have been clear on the face
23 of the record and known to both the Court and the parties at the time the judgment was
24 entered. Thus, Petitioner has failed to establish he is entitled to relief under Rule 60(b) or
25 Local Rule 7-18. Moreover, the Motion is untimely under Rule 60(c).

26 Accordingly, the Motion should be denied. Petitioner should refrain from filing
27 additional motions pursuant to Rule 60 unless he can meet its stringent requirements.

CERTIFICATE OF APPEALABILITY

For the reasons set forth above, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right, as is required to support the issuance of a certificate of appealability. See 28 U.S.C. § 2253(c)(2). Accordingly, a certificate of appealability is not warranted.

ORDER

Based on the foregoing, IT IS ORDERED that: (1) the Motion is denied; and (2) a certificate of appealability is denied.

DATED: 5/4/22

PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE