

(APPENDIX A);

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UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

FEB 23 2018

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

STEVEN CIOTTA,

Petitioner-Appellant,

v.

K. HOLLAND, Warden,

Respondent-Appellee.

No. 18-55104

D.C. No.

2:12-cv-10593-GHK-AS

Central District of California,
Los Angeles

ORDER

Before: TROTT and FISHER, Circuit Judges.

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), *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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(APPENDIX B):

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION
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11 STEVEN CIOTTA,) Case No. CV 12-10593-GHK(AS)
12 Petitioner,)
13 v.) ORDER DENYING PETITIONER'S (THIRD)
14 K. HOLLAND, Warden,) MOTION FOR RELIEF FROM JUDGMENT
15 Respondent.)
16

17 Petitioner Steven Ciotta ("Petitioner"), a prisoner in the custody
18 of the California Department of Corrections and Rehabilitation, seeks
19 relief from this Court's June 17, 2014 dismissal of his Petition for
20 Writ of Habeas Corpus. (Docket Entry No. 89). For the reasons stated
21 below, Petitioner's Motion for Relief from Judgment pursuant to Fed. R.
22 Civ. P. 60(a) and 60(b) is DENIED.

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I. PROCEDURAL HISTORY

On December 11, 2012, Petitioner filed a Petition for Writ of Habeas Corpus By a Person in State Custody pursuant to 28 U.S.C. § 2254 ("Petition"). (Docket Entry No. 1). The Petition challenged Petitioner's 1998 convictions for first degree murder, first degree attempted murder and various special allegation findings. On June 17, 2014, the district court denied the Petition with prejudice, in accordance with the findings and conclusions of the Magistrate Judge that the Petition was untimely and that Petitioner had not established an entitlement to equitable tolling, (see Docket Entry Nos. 45, 52-53), and denied Petitioner a certificate of appealability ("COA") (Docket Entry No. 54).

On June 23, 2014, Petitioner filed a Notice of Appeal from the Court's denial of his Petition. (Docket Entry No. 55). On January 15, 2015, the Ninth Circuit Court of Appeals denied Petitioner's request for a COA. (Docket Entry No. 59).

On July 13, 2015, Petitioner filed a Notice of Appeal from the Court's February 24, 2015 Notice of Document Discrepancies with respect to Petitioner's Motion For Leave to File Amended Complaint (see Docket Entry No. 60). (Docket Entry No. 62).¹

¹ On July 30, 2015, Petitioner filed a "1st Motion for Reconsideration, and Leave to File a [sic] Amended Complaint." (Docket Entry No. 64). On August 14, 2015, the district court, construing Petitioner's filing as a Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b), denied it. (Docket Entry No. 66).

(continued...)

1 On March 22, 2016, the Ninth Circuit Court of Appeals remanded the
2 case to this Court for the limited purpose of granting or denying a COA
3 from this Court's discrepancy order rejecting Petitioner's motion for
4 leave to file an amended petition in Petitioner's habeas action (see
5 Docket Entry No. 73). On March 23, 2016, the district court denied
6 Petitioner a COA. (Docket Entry No. 74).

7
8 On May 18, 2016, Petitioner filed another Notice of Appeal from the
9 Court's February 24, 2015 Notice of Document Discrepancies with respect
10 to Petitioner's Motion For Leave to File Amended Complaint (see Docket
11 Entry No. 60). (Docket Entry No. 76). On May 19, 2016, the Ninth
12 Circuit Court of Appeals denied Petitioner's Request for a COA.
13 (Docket Entry No. 75). On June 10, 2016, the Ninth Circuit Court of
14 Appeals dismissed Petitioner's appeal for lack of jurisdiction.
15 (Docket Entry No. 78). The judgment of the Ninth Circuit Court of
16 Appeals took effect on July 7, 2016. (Docket Entry No. 79).²

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18 ¹ (...continued)

19 On September 2, 2015, Petitioner filed a Notice of Appeal from the
20 district court's denial of the Motion for Relief from Judgment and a
21 motion for a COA. (Docket Entry No. 67).

22 On September 25, 2015, the district court denied Petitioner's
23 Request for a COA. (Docket Entry No. 69).

24 On November 3, 2015, the Ninth Circuit Court of Appeals denied
25 Petitioner's Request for a COA. (Docket Entry. 72).

26 ² On February 23, 2017, Petitioner filed a "Motion Seeking
27 Leave from Court for Reconsideration of (28 U.S.C. 2254) Petition Doc.
#CV-12-10593-GHK-AS, Disposition, Denied on 6-17-14 Granting Motion to
Dismiss Under A.E.D.P.A. (Time-bar)." (Docket Entry No. 80). On April
24, 2017, the district court, construing Petitioner's filing as a
Second Motion for Relief from Judgment pursuant to Fed. R. Civ. P.
(continued...)

1 On December 15, 2017, Petitioner filed a "Motion Seeking Leave from
2 Court for Reconsideration of (28 U.S.C. 2254) Petition Doc. #CV-12-
3 10593-GHK-AS, Disposition, Denied on 6-17-14 Granting Motion to Dismiss
4 Under A.E.D.P.A. (Time Bar)" pursuant to Fed. R. Civ. P. 60(a) and
5 60(b) ("Motion") (Docket Entry No. 89), which the Court construes as a
6 Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(a) and
7 60(b).

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9 **II. DISCUSSION**

10
11 Petitioner filed his Motion pursuant to Fed. R. Civ. P. 60(a)
12 ("Corrections Based on Clerical Mistakes; Oversight and Omissions") and
13 60(b)(6) ("any other reason that justifies relief"). (See Motion at 1-
14 20).

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19 ² (...continued)
20 60(b), denied it. (Docket Entry No. 82).

21 On May 22, 2017, Petitioner filed a Notice of Appeal from the
22 district court's denial of the Second Motion for Relief from Judgment.
(Docket Entry No. 84).

23 On March 22, 2016, the Ninth Circuit Court of Appeals remanded the
24 case to this Court for the limited purpose of granting or denying a COA
from the district court's denial of the Second Motion for Relief from
Judgment. (See Docket Entry No. 86).

25 On May 30, 2017, the district court denied Petitioner a COA.
26 (Docket Entry No. 87).

27 On August 2, 2017, the Ninth Circuit Court of Appeals denied
Petitioner's Request for a COA. (Docket Entry No. 89).

1 Petitioner's allegations are unintelligible. To the extent that
2 Petitioner is attempting to argue that there was a mistake in the June
3 17, 2014 Judgment under Fed. R. Civ. P. 60(a) (see e.g., Motion at 1),
4 Petitioner fails to specify the nature of the mistake or allege that
5 the Judgment was ambiguous and/or does not reflect the intent of the
6 district court. See Garamendi v. Henin, 683 F.3d 1069, 1078 (9th Cir.
7 2012) ("Rule 60(a) is not limited to situations in which a judgment
8 clearly misrepresents what the court meant to state. A district court
9 may also invoke Rule 60(a) to resolve an ambiguity in its original
10 order to more clearly reflect contemporaneous intent and ensure the
11 court's purpose is fully implemented.") (citation omitted); see also 11
12 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice*
13 & *Procedure*, § 2854 (3d. 2012) ("Rule 60(a) is not a vehicle for
14 relitigating matters that already have been litigated and decided, nor
15 to change what has been deliberately done.") (footnotes omitted).
16

17 To the extent that Petitioner is attempting to reargue his
18 contention that the Petition was not time barred (see e.g., Motion at
19 1-22), the Court has already rejected that claim. (See Docket Entry
20 Nos. 45 (Report and Recommendation of United States Magistrate Judge)
21 and 52 (Order Accepting Findings, Conclusions and Recommendation of
22 United States Magistrate Judge)).
23

24 Petitioner has also failed to show extraordinary circumstances
25 justifying the reopening of a final judgment, as required under Rule
26 60(b)(6). See Gonzalez v. Crosby, 545 U.S. 524, 535 (2005).
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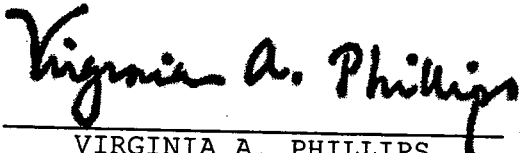
1 To the extent that Petitioner might be attempting to allege new
2 substantive claims or to file an amended federal habeas petition, the
3 assertion of any such claim(s) would require the Court to treat the
4 Motion as a successive habeas petition. See Gonzalez v. Crosby, 545
5 U.S. at 530-32.³

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III. ORDER

For all these reasons, Petitioner's Motion is **DENIED**.

DATED: January 4, 2018.


VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

Presented by:

_____/s/_____
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

³ Before filing a second or successive habeas petition, Petitioner is required to obtain authorization from the Ninth Circuit Court of Appeals. See 28 U.S.C. §2244(b)(3)(A); Felker v. Turpin, 518 U.S. 651, 657 (1996).

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