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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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10 Allace L. Cornellier,)
11 Petitioner,) No. CV-05-2679-PHX-PGR (JM)
12 vs.)
13 Dora Schriro, et al.,) ORDER
14 Respondents.)
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16 On December 20, 2006, Magistrate Judge Marshall entered a Report and
17 Recommendation stating that the petitioner's Amended Petition for Writ of
18 Habeas Corpus filed pursuant to 28 U.S.C. § 2254 should be dismissed as
19 having been untimely filed. The petitioner did not file any objection to the Report
20 and Recommendation. On February 6, 2007, the Court entered both an order
21 (doc. #16) that accepted the Magistrate Judge's Report and Recommendation
22 (doc. #15) and a judgment (doc. #17) that dismissed the petitioner's Amended
23 Petition for Writ of Habeas Corpus. On February 23, 2007, the petitioner filed a
24 Petition for Reconsideration (doc. #18) pursuant to Fed.R.Civ.P. 60(b), wherein
25 he stated that he did not object to the Report and Recommendation because he
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1 never received a copy of it, as well as a Notice of Appeal (doc. #19), and a
2 Motion/Request for a Certificate of Appealability (doc. #20). On February 28,
3 2007, the Court entered a certificate of appealability, wherein it noted that the
4 petitioner's concurrent Notice of Appeal divested this Court of jurisdiction to rule
5 on the reconsideration request; the certificate further stated that the Court would
6 grant the reconsideration requested by the petitioner if the Ninth Circuit remanded
7 this case to this Court for the purpose of resolving the reconsideration request.
8 Unbeknownst to the Court, the Ninth Circuit entered an order on April 5, 2007
9 wherein it stayed the petitioner's appeal pending a ruling from this Court on the
10 petitioner's request for reconsideration. The petitioner, in a letter filed on June 4,
11 2007, has requested that the Court provide him with the status of his request for
12 reconsideration.¹

13 Although the copy of the Report and Recommendation was timely mailed
14 to the petitioner at his address of record and was never returned to the Court as
15 undeliverable, the Court accepts the petitioner's statement in his Petition for
16 Reconsideration that he never received his copy. The Court will this thus grant
17 the Petition for Reconsideration, and will vacate its order and judgment entered

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20 The undersigned Judge notes that the first knowledge he received of the
21 Ninth Circuit's order came on June 7, 2007, which is when (1) the Ninth Circuit Clerk's
22 Office telephoned the undersigned Judge's chambers inquiring about the status of a
23 ruling on the petitioner's request for reconsideration and faxed to chambers a copy of its
24 April 5, 2007 order on being informed that this Court had no knowledge of the order,
25 and (2) coincidentally, the undersigned Judge received a copy of the petitioner's letter of
26 inquiry which contained a copy of the Ninth Circuit's order. A review of the Ninth
Circuit's order establishes that the reason that this Court never timely received a copy of
the order is that the Ninth Circuit inadvertently captioned the order as being from an
appeal from a District of Oregon case and presumably mistakenly sent the copy of its
order to the District of Oregon. A copy of the Ninth Circuit's order was docketed in this
case on June 7, 2007.

1 on February 6, 2007, and will permit the petitioner to now file an objection to the
2 Report and Recommendation. Therefore,

3 IT IS ORDERED that the petitioner's motion for status (doc. #25) is
4 granted.

5 IT IS FURTHER ORDERED that the petitioner's Petition for
6 Reconsideration (doc. #18) is granted.

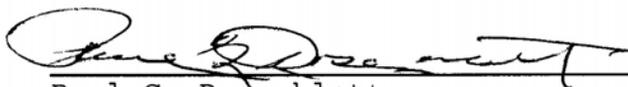
7 IT IS FURTHER ORDERED that the Order (doc. #16) dismissing the
8 petitioner's Amended Petition for Writ of Habeas Corpus and the Judgment of
9 dismissal (doc. #17) are both vacated.

10 IT IS FURTHER ORDERED that the Clerk of the Court shall mail the
11 petitioner a copy of the Report and Recommendation (doc. #15).

12 IT IS FURTHER ORDERED that the petitioner shall file his objection to the
13 Report and Recommendation (doc. #15) no later than **July 6, 2007**.

14 IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of
15 this Order to the Clerk of the Court for the Ninth Circuit.

16 DATED this 7th day of June, 2007.

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19 Paul G. Rosenblatt
20 United States District Judge
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