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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bobby Jerry Tatum,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.
14

No. CV-15-00711-PHX-DJH

ORDER

15 Pending before the Court is Petitioner Bobby Jerry Tatum’s Motion to Reopen
16 Proceedings Under Rule 60(b) (Doc. 47) (“the Motion”). Respondents have filed a
17 Response (Doc. 48). Petitioner has not filed a Reply and the time to do so has expired.
18 LRCiv 7.2(d). The Court will grant the Motion.

19 **I. Background**

20 Proceeding *pro se*, Petitioner filed an Amended Petition for Writ of Habeas Corpus
21 pursuant to 28 U.S.C. § 2254 on September 28, 2015, in which he sought relief from his
22 sentence of life without parole under *Miller v. Alabama*, 567 U.S. 460 (2012). (Doc. 11).
23 These proceedings were stayed on November 2, 2015, to allow for exhaustion of
24 Petitioner’s state court post-conviction review proceedings. (Doc. 17). That stay was
25 temporarily lifted after receiving notice that the Arizona Supreme Court had denied review
26 of Petitioner’s state petition; it was reinstated pending Petitioner’s certiorari proceedings
27 in the United States Supreme Court. (Docs. 20; 28). On December 2, 2016, the United
28 States Supreme Court granted relief, vacated, and remanded Petitioner’s case back to state

1 court for further proceedings in light of *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).
2 Although the Arizona Court of Appeals ordered the parties to file supplemental briefing
3 describing how *Montgomery* and a recently decided Arizona case, *State v. Valencia*, 386
4 P.3d 392 (Ariz. 2016), affected Petitioner’s claim, the state ultimately waived its right to
5 do so and conceded that the United States Supreme Court’s opinion remanding Petitioner’s
6 case required the Arizona Court of Appeals to grant post-conviction relief and remand to
7 the trial court for resentencing (the “stipulation”). The Arizona Court of Appeals accepted
8 the concession and remanded Petitioner’s case to the trial court, where it was set for
9 resentencing.

10 As a result of these developments and believing “any constitutional infirmity in Mr.
11 Tatum’s sentence has been cured,” Petitioner moved to voluntarily dismiss his federal
12 habeas Petition. (Doc. 36 at 5). The Court granted the request, and his federal habeas case
13 was dismissed, as moot, on March 29, 2018. (Docs. 38, 39).

14 In his Motion to Reopen, Petitioner states that while awaiting resentencing, the state
15 moved to withdraw from the stipulation presented to the Arizona Court of Appeals based
16 on the United States Supreme Court’s decision in *Jones v. Mississippi*, 141 S. Ct. 1307
17 (2021). (Doc. 47 at 4). The trial court granted the state’s motion on January 25, 2022, and
18 as such, Petitioner’s resentencing did not occur. (*Id.*) Petitioner says these circumstances
19 justify reopening his federal habeas proceedings.

20 **II. Discussion**

21 Under Federal Rule of Civil Procedure 60(b), a Court may, on “motion and just
22 terms,” relieve a party from final judgment under certain circumstances, including, newly
23 discovered evidence, fraud by the opposing party, or a mistake committed by the court—
24 and a sixth, catch-all category, that allows a court to reconsider a final judgment for “any
25 other reason that justifies relief.” Fed. R. Civ. P. 60(b)(1)–(6).

26 Petitioner first argues there is cause to reopen the case under Rule 60(b)(3) because
27 the state made a fraudulent representation that it would resentence Petitioner, and in
28 reliance on that statement, Petitioner voluntarily dismissed his habeas proceedings.

1 Alternatively, Petitioner argues that reopening is proper under Rule 60(b)(6), the Rule’s
2 catch-all provision, because doing so is in the interests of justice. (Doc. 47). Respondents
3 disagree there is a basis for the Court to reopen the case under Rule 60(b)(3). They point
4 out that “the State moved to withdraw from the stipulation based on the Supreme Court’s
5 subsequent decision in *Jones*, which clarified the Court’s previous decisions in *Miller* and
6 *Montgomery*, and the state court granted the State’s motion based on that change in law.”
7 (Doc. 48 at 6). Respondents nevertheless agree that there is cause to reopen the case under
8 Rule 60(b)(3). (Doc. 48). They concede that Petitioner has satisfied the “reasonable time”
9 filing requirement of Rule 60(b)(6), and that extraordinary circumstances justify reopening
10 the judgment. (Doc. 48 at 5). Respondents state “[t]here is no question that Tatum
11 voluntarily moved to dismiss his petition because of the resentencing stipulation.” (*Id.*)

12 **A. Rule 60(b)(3) — Misrepresentation**

13 At this juncture, the Court rejects the premise that reopening is warranted because
14 the state misrepresented that it would resentence Petitioner. A party seeking relief from a
15 judgment under Rule 60(b)(3) must prove “fraud, misrepresentation, or other misconduct”
16 by clear and convincing evidence. *Casey v. Albertson’s Inc.*, 362 F.3d 1254, 1260 (9th Cir.
17 2004). At the heart of Petitioner’s argument is a dispute of applicable law on whether
18 Petitioner is constitutionally required to be resentenced. Such disagreements do not
19 constitute fraud. Indeed, “[i]f every dispute of fact or law constituted fraud, then ‘nearly
20 every action would be vulnerable to re-litigation under Rule 60(b)(3).’” *Zagorsky-*
21 *Beaudoin v. Rhino Entertainment Co.*, 2019 WL 5960084, at *2 (D. Ariz. Nov. 12, 2019)
22 (citing *Scott v. Donahoe*, 2015 WL 546020, at *5 (C.D. Cal. Feb. 10, 2015)).

23 **B. Rule 60(b)(6) — Extraordinary Circumstances**

24 The Court nevertheless agrees with the parties that there is cause to reopen this case
25 under Rule 60(b)(6). Rule 60(b)(6) grants federal courts broad authority to relieve a party
26 of a final judgment. A party seeking relief under Rule 60(b)(6) must do so “within a
27 reasonable time,” and must demonstrate “extraordinary circumstances” justifying
28 reopening the judgment. *See* Fed. R. Civ. P. 60(c)(1); *Pioneer Inv. Servs. Co. v. Brunswick*

1 *Assoc. Ltd. P'ship*, 507 U.S. 380, 393 (1993); *Bynoe v. Baca*, 966 F.3d 972, 979 (9th Cir.
2 2020).¹ Extraordinary circumstances occur where there are “other compelling reasons” for
3 opening the judgment. *Klapprott*, 335 U.S. at 613.

4 Petitioner’s Motion is timely under the Rule. Petitioner alerted the Court of his need
5 to reopen the matter when he asked to be appointed counsel to prepare the filing and
6 represent him when and if the proceedings were reopened. (*See* Doc. 40). On February
7 28, 2022, the Court ultimately granted Petitioner’s request for appointed counsel, and
8 directed him to file any motion to reopen within 28 days. (Doc. 43). Petitioner
9 subsequently asked for a short extension of time to file the motion (Doc. 45), which the
10 Court granted for good cause (Doc. 46). The Motion to Reopen, filed on April 11, 2022,
11 is therefore timely.

12 Moreover, as Respondents concede, extraordinary circumstances justify reopening
13 these proceedings. The sole reason judgment was entered in this matter was because
14 Petitioner reasonably understood that the state had agreed to his resentencing, which was
15 the relief he was seeking in his Amended Petition. Now that those conditions no longer
16 exist, Petitioner’s habeas case should proceed. The rare conditions under which relief may
17 be granted under Rule 60(b)(6) are satisfied here.

18 Accordingly,

19 **IT IS ORDERED** that Petitioner’s Motion to Reopen Proceedings Under Rule
20 60(b) (Doc. 47) is **granted**. The Clerk of Court is kindly directed to reopen this matter
21 under Fed. R. Civ. P. 60(b)(6).

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27 ¹ Typically, a motion brought under Rule 60(b)(6) may also not be “premised on another
28 ground delineated in the Rule.” *Bynoe*, 966 F.3d at 979. The Court has rejected Petitioner’s
first premise—that these proceedings should be reopened due to misrepresentation—and
thus finds that Rule 60(b)(6) may be applied. *Klapprott v. United States*, 335 U.S. 601,
613 (1949).

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IT IS FURTHERED ORDERED that Respondents shall file their answer to the Amended Petition for Writ of Habeas Corpus (Doc. 11) within forty days from the date of this Order. Petitioner may file a reply to Respondents' answer within thirty days from the date of service of the answer.

Dated this 10th day of May, 2022.



Honorable Diane J. Humetewa
United States District Judge