

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Willie Lee Parker,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.
14

No. CV-15-01130-PHX-JAT

ORDER

15 On August 9, 2016, this Court issued an Order and Judgment ruling on the Petition
16 in this case. On September 19, 2016, Petitioner filed a motion for reconsideration of that
17 Order.

18 Motions for reconsideration are due within 14 days. LR Civ. 7.2(g)(2). Therefore,
19 if the Court accepts that Petitioner intended this filing to be a motion for reconsideration,
20 it is untimely. Alternatively, if the Court deems Petitioner's filing to be a motion to alter
21 or amend judgment under Federal Rule of Civil Procedure 59, any such motion was due
22 within 28 days of the August 9, 2016 judgment. Fed. R. Civ. P. 59(e). Thus, even if this
23 Court treats the motion as a Rule 59 motion, it is still untimely.

24 If the Court were to treat Petitioner's filing as a motion for relief from judgment or
25 order under Rule 60, it might be timely assuming it fell within the scope of the Rule.
26 However, on September 8, 2016, Petitioner appealed this Court's August 9, 2016
27 Judgment to the Court of Appeals. Rule 60 motions are not motions this Court retains
28 jurisdiction to consider during the pendency of an appeal unless they are filed within 28

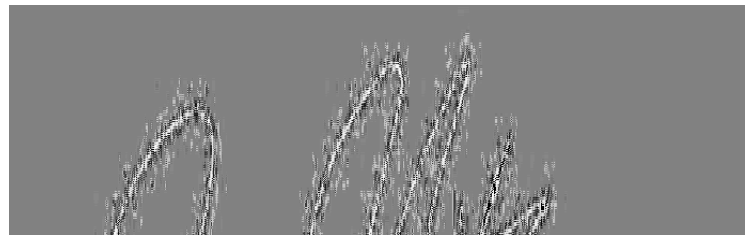
1 days of the judgment. Fed. R. App. Pro. 4(a)(4)(A)(vi); *see also United Nat. Ins. v. R&D*
2 *Latex Corp.*, 242 F.3d 1102, 1109 (9th Cir. 2001) (“Once a notice of appeal takes effect,
3 the district court loses jurisdiction over the matter place before the appellate court.”).
4 Here, Petitioner’s motion was not filed within 28 days; therefore this Court does not have
5 jurisdiction to consider it (assuming Petitioner intended it to be a Rule 60 motion).¹

6 For all of the foregoing reasons,

7 **IT IS ORDERED** that Petitioner’s motion for reconsideration (Doc. 58) is denied.

8 Dated this 20th day of October, 2016.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



¹ Even if the Court applies the prison mailbox rule, the motion for reconsideration was dated by Petitioner on September 13, 2016; thus, it is still untimely.