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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Edward Lee Jones, Jr.,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.  
14

No. CV-16-02051-PHX-DJH

**ORDER**

15 Pending before the Court is Petitioner’s 35-page “Motion for Reconsideration of  
16 Court’s Latest Order at Dkt. 42” (the “Motion for Reconsideration”) in which he seeks  
17 reconsideration of the Court’s Order denying his request to re-open his federal habeas case.  
18 (Doc. 47). Notwithstanding its title, the body of the Motion for Reconsideration asks that  
19 the Court set aside its February 13, 2017, Order (Doc. 30) that dismissed his federal habeas  
20 petition and denied him a certificate of appealability (“COA”) (Doc. 30). (Doc. 47 at 1).  
21 Petitioner asks that the Court construe this Motion as a Rule 60(b) motion. (*Id.* at 35).

22 **I. Background**

23 Petitioner filed his federal habeas action on June 23, 2016. (Doc. 1). On December  
24 16, 2017, Magistrate Judge Boyle recommended the Petition be denied (“R&R”).  
25 (Doc. 27). Over Petitioner’s objections (Doc. 28), on February 13, 2017, the Court adopted  
26 the R&R, dismissed his Petition as untimely, and denied Petitioner a COA, finding  
27 dismissal of the Petition was “justified by a plain procedural bar and jurists of reason would  
28 not find the procedural ruling debatable.” (Doc. 30). Petitioner appealed the Court’s

1 judgment to the Ninth Circuit Court of Appeals. (Doc. 24). On September 8, 2017, the  
2 Ninth Circuit denied Petitioner’s request for a COA and terminated his appeal. *Jones v.*  
3 *Ryan*, No. 1715385, 2017 WL 8159218 (9th Cir. Sept. 7, 2017). Petitioner sought  
4 reconsideration of that order on September 25, 2017. *See* Petitioner-Appellant’s Motion  
5 for Reconsideration, *Jones v. Ryan*, No. 17-15385 (9th Cir. Sept. 7, 2017). The court  
6 denied Petitioner’s request for reconsideration on October 4, 2017. *Jones v. Ryan*, No. 17-  
7 15385 (9th Cir. Oct. 4, 2017) (noting that “no further filings will be entertained in this  
8 closed case”). On April 2, 2018, the Ninth Circuit received a letter from the United States  
9 Supreme Court Clerk stating the Supreme Court had denied Petitioner’s “motion to direct  
10 the Clerk to file a petition for writ of certiorari out of time.” *Jones v. Ryan*, No. 17-15385  
11 (9th Cir. Apr. 2, 2018).

12 Nearly three years later, on July 29, 2021, Petitioner filed a “Notice of Interference  
13 by Arizona Department of Corrections Rehabilitation and Re-entry and Motion to Re-open  
14 Case to Allow Filing of Rule 60 Motion” with this Court. (Doc. 41). Therein, Petitioner  
15 said he suspected someone interfered with his receipt of the Supreme Court’s order denying  
16 his motion to file a petition of writ of certiorari out of time, and as a result, he “was made  
17 to believe his case was under review” for over three years, an alleged infringement of his  
18 due process rights. (Doc. 41 at 3). This Court denied Petitioner’s Motion to Re-Open on  
19 October 21, 2021, finding that Petitioner’s contentions did not present grounds from which  
20 he could obtain relief from this Court. (Doc. 42 at 2). The Court noted that Petitioner had  
21 not established wrongful interference with his due process rights, and that his failure to  
22 monitor the public docket for over two years showed a lack of diligence, not that he had  
23 been denied access to the courts. (*Id.* at 2–3).

24 On December 20, 2021, Petitioner filed the pending Motion for Reconsideration  
25 (Doc. 47). Therein, he (1) repeats the arguments made in his Petition and Reply in Support  
26 of his Petition (*id.* at 9–18); (2) argues that this Court erred when it denied him a COA (*id.*  
27 at 18–21); and (3) contends, as he did in his Objection, that his actual innocence should  
28 excuse his procedural bar or default of claims (*id.* at 21–35).

1 **II. Rule 60(b) Motions**

2 As Petitioner requests, the Court will construe Petitioner’s Motion for  
3 Reconsideration as a Rule 60(b) motion to set aside its Order dismissing his habeas petition  
4 and denying him a COA. Rule 60(b) is the appropriate rule to invoke when a party wishes  
5 a court to reconsider claims it has already decided in a § 2254 petition. *See Gonzalez v.*  
6 *Crosby*, 545 U.S. 524, 532 n.4 (2005) (finding that a motion for relief from judgment  
7 challenging only the district court’s prior ruling that the habeas petition was time-barred is  
8 not the equivalent of a second or successive petition). *See also Morehead v. Schriro*, 2008  
9 WL 2225781 (D. Ariz. May 27, 2008) (“[P]etitioner may properly seek such  
10 reconsideration through the mechanism of a Rule 60(b) motion because the Court, by  
11 finding that the petitioner had procedurally defaulted on Ground 7, never reached the merits  
12 of that claim.”).

13 Rule 60 articulates six reasons a court may relieve a party from a final judgment or  
14 order. Clauses 1 through 5 provide specific reasons for granting relief, while clause 6  
15 applies to grounds for relief for “any other reason justifying relief from the operation of  
16 the judgment.” Fed. R. Civ. P. 60(b). Clauses 1 through 3 cannot be raised more than one  
17 year after the entry of judgment, whereas clauses 4 through 6 must be brought “within a  
18 reasonable time.” Fed. R. Civ. P. 60(c)(1).

19 Petitioner does not identify which subsection of Rule 60(b) he brings his Motion  
20 under, but the Court finds that the only potentially applicable section is Rule 60(b)(6). The  
21 Court denied Petitioner’s Petition on February 13, 2017, far over a year before he filed his  
22 Rule 60(b) motion, and thus subsections (b)(1)–(3) cannot provide relief. And in seeking  
23 reconsideration of the Court’s Order denying his Petition, Petitioner is challenging the  
24 Court’s determination that his Petition is untimely, not that it is “void” or relief is warranted  
25 because “the judgment has been satisfied, released, or discharged; it is based on an earlier  
26 judgment that has been reversed or vacated; or applying it prospectively is no longer  
27 equitable.” *See* Rule 60(b)(4) & (5). Subsections 4 and 5 are thus inapplicable. The Court  
28 will therefore assess his request under subsection 6.

1 A motion under Rule 60(b)(6) must be brought “within a reasonable time” and  
2 requires a showing of “extraordinary circumstances.” *Gonzalez*, 545 U.S. at 535. Courts  
3 are cautioned that Rule 60(b)(6) is to be “used sparingly as an equitable remedy to prevent  
4 manifest injustice and is to be utilized only where extraordinary circumstances prevented  
5 a party from taking timely action to prevent or correct an erroneous judgment.” *Latshaw v.*  
6 *Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006). Notably, “[s]uch  
7 circumstances will rarely occur in the habeas context.” *Gonzalez*, 545 U.S. at 535.

8 Petitioner’s Motion for Reconsideration certainly was not brought within a  
9 reasonable time. Over four years have passed since the Court dismissed Petitioner’s habeas  
10 claims; Petitioner has not shown he exercised reasonable diligence in waiting this long to  
11 seek relief from the judgment.<sup>1</sup> As the Court has already ruled, the fact that he believed  
12 his writ to the United State Supreme Court was under review for three years because he  
13 never received notice of the letter rejecting it does not implicate his due process rights or  
14 excuse his lack of diligence. (*See* Doc. 42). Petitioner has also failed to make a showing  
15 of extraordinary circumstances. Petitioner asserts that the Court erred in denying his §  
16 2254 motion as untimely and reiterates the arguments he made in his Petition and Reply in  
17 support thereof. He also asserts that he is actually innocent and thus any procedural default  
18 should be excused. But there has been no “change of circumstances between the time when  
19 [he] filed his habeas petition and the time when he filed his 60(b) motion” that justifies  
20 relief. *Hamilton v. Newland*, 374 F.3d 822, 825 (9th Cir. 2004). Indeed, Petitioner’s “delay  
21 in raising his actual innocence claim may be attributable to inattention or inexperience but

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23 <sup>1</sup> Local Rules in the District of Arizona state that absent good cause, “any motion for  
24 reconsideration shall be filed no later than fourteen (14) days after the date of the filing of  
25 the Order that is the subject of the motion.” LRCiv 7.2(g). Moreover, “[u]nless otherwise  
26 permitted by the Court, a motion including its supporting memorandum. . . may not exceed  
27 seventeen (17) pages, exclusive of attachments and any required statement of facts.”  
28 LRCiv 7.2(e)(1). Petitioner’s Motion for Reconsideration was filed over four years after  
the Court denied his habeas Petition and nearly two months after the Court denied his first  
Motion to Re-open. As noted, the Motion is 35-page long. Petitioner did not seek leave  
to file the Motion late or with excess pages. Although the Court could have denied  
Petitioner’s Motion for noncompliance with these sections, it did not. Instead, it has  
reviewed Petitioner’s arguments and concluded that Petitioner has not presented any  
ground under which the Court should reconsider or set aside its prior orders.

1 neither deficiency constitutes an ‘extraordinary circumstance’ that justifies Rule 60(b)  
2 relief.” *Id.* (internal quotation omitted).

3         Petitioner also argues that the Court applied the wrong standard when it denied him  
4 a COA following the denial of his habeas petition. In doing so, he cites to *Buck v. Davis*,  
5 137 S. Ct. 759 (2017) and says that the Court erred in denying him a COA when it  
6 dismissed his Petition not on the merits, but on procedural grounds. Petitioner does not  
7 elaborate further, and nothing in the *Buck* opinion supports Petitioner’s argument. Rule 11  
8 of the Rules Governing § 2254 cases provides that, “[t]he district court must issue or deny  
9 a certificate of appealability when it enters a final order adverse to the applicant.” To be  
10 entitled to a COA, a habeas petition must show that: “jurists of reason would find it  
11 debatable whether the petition states a valid claim of the denial of a constitutional right.”  
12 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). If the petition was dismissed on procedural  
13 grounds, the petitioner must also show “that jurists of reason would find it debatable  
14 whether the district court was correct in its procedural ruling.” *Id.* “[B]oth showings” must  
15 be made. *Id.* In this case, the Court dismissed the Petition as untimely, and denied a COA  
16 because jurists of reason would not have found the procedural ruling debatable. (Doc. 30  
17 at 6). In doing so, the Court did not apply the wrong standard. Petitioner’s request that the  
18 Court set aside its denial of his Petition and COA is denied.

19         The Court will also deny a COA of this Order. *U.S. v. Winkles*, 795 F.3d 1134, 1142  
20 (9th Cir. 2015) (holding “a COA is required to appeal the denial of a Rule 60(b) motion for  
21 relief from judgment arising out of the denial of a section 2255 motion”); *see also Ciotta*  
22 *v. Frauenheim*, 2017 WL 4546728, at \*1 (9th Cir. Sept. 7, 2017) (applying *Winkles* to a  
23 Rule 60(b) motion in 28 U.S.C. § 2254 case); *Ruelas v. Muniz*, 2016 WL 1573439, at \*7  
24 (C.D. Cal. Apr. 19, 2016) (same). A petitioner is entitled to a certificate of appealability  
25 only if he shows “that (1) jurists of reason would find it debatable whether the district court  
26 abused its discretion in denying the Rule 60(b) motion *and* (2) jurists of reason would find  
27 it debatable whether the underlying [habeas corpus petition] states a valid claim of the  
28 denial of a constitutional right.” *Winkles*, 795 F.3d at 1142. Petitioner has failed to

1 demonstrate that he is entitled to a COA related to either the Court's Order denying his  
2 Motion to Reopen or this Motion for Reconsideration. Reasonable jurists would not find  
3 the Court's denial an abuse of discretion.


4 Accordingly,

5 **IT IS ORDERED** that Petitioner's Motion for Reconsideration (Doc. 47) is **denied**.  
6 This case shall remain closed.

7 **IT IS FURTHER ORDERED** that a certificate of appealability is **denied** as to this  
8 Rule 60(b) motion.

9 Dated this 1st day of March, 2022.

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Honorable Diane J. Humetewa  
United States District Judge