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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Heriberto F Catarino,

10 Petitioner,

11 v.

12 Charles Ryan, et al.,

13 Respondents.
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No. CV-16-00012-TUC-RM

ORDER

15 On January 16, 2018, this Court dismissed Petitioner Heriberto F. Catarino's
16 Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 after finding that Petitioner's
17 claims were procedurally defaulted and that Petitioner had failed to establish cause and
18 prejudice or a fundamental miscarriage of justice to excuse the procedural default. (Doc.
19 30.) Pursuant to this Court's Order (Doc. 30), the Clerk of Court entered judgment and
20 closed this case (Doc. 31).

21 Currently pending before the Court is Petitioner's Motion for Reconsideration
22 (Doc. 32). In the Motion, Petitioner argues that "the matter of 'cumulative error' was not
23 addressed as a separate and distinct ground that, collectively, supersedes its component
24 grounds which were procedurally defaulted." (*Id.* at 1.)

25 **I. Standard of Review**

26 Motions for reconsideration should be granted only in rare circumstances. *See*
27 *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995).
28 "Reconsideration is appropriate if the district court (1) is presented with newly

1 discovered evidence, (2) committed clear error or the initial decision was manifestly
2 unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J,*
3 *Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see also* LRCiv
4 7.2(g) (motions for reconsideration will ordinarily be denied “absent a showing of
5 manifest error or a showing of new facts or legal authority that could not have been
6 brought to [the Court’s] attention earlier with reasonable diligence”). Motions for
7 reconsideration should not be used for the purpose of asking a court “to rethink what the
8 court had already thought through—rightly or wrongly.” *Defenders of Wildlife*, 909 F.
9 Supp. at 1351 (internal quotation marks omitted); *see also* LRCiv 7.2(g) (motions for
10 reconsideration shall not “repeat any oral or written argument made by the movant in
11 support of or in opposition to the motion that resulted in the Order”). Mere disagreement
12 with a previous order is an insufficient basis for reconsideration. *See Leong v. Hilton*
13 *Hotels Corp.*, 689 F. Supp. 1572, 1573 (D. Haw. 1988).

14 **II. Discussion**

15 Because Petitioner’s § 2254 Petition was filed after April 24, 1996, the effective
16 date of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), this case
17 is governed by AEDPA. *See Patterson v. Stewart*, 251 F.3d 1243, 1245 (9th Cir. 2001).

18 A § 2254 petition subject to AEDPA cannot be granted unless it appears that (1)
19 the petitioner has exhausted all available state-court remedies, (2) there is an absence of
20 available state corrective process, or (3) state corrective process is ineffective to protect
21 the rights of the petitioner. 28 U.S.C. § 2254(b)(1); *see also Coleman v. Thompson*, 501
22 U.S. 722, 731 (1991) (discussing exhaustion requirement). A claim is considered
23 procedurally defaulted and thus precluded from federal review if (1) the claim was not
24 presented in state court and no state remedies are currently available because the court to
25 which the petitioner would be required to present the claim in order to meet the
26 exhaustion requirement would find the claims procedurally barred under state law, or (2)
27 the petitioner raised the claim in state court but the state court rejected the claim based on
28 “independent” and “adequate” state procedural grounds. *See Coleman*, 501 U.S. at 729-

1 32, 735 n.1. Federal courts will consider a procedurally defaulted claim only if the
2 petitioner demonstrates cause and prejudice or a fundamental miscarriage of justice. *Id.*
3 at 750. To demonstrate cause, a petitioner must show that “some objective factor
4 external to the defense impeded [his] efforts to comply with the State’s procedural rule.”
5 *Murray v. Carrier*, 477 U.S. 478, 488 (1986). To demonstrate prejudice, a petitioner
6 must show that the constitutional violations alleged in his § 2254 Petition “worked to his
7 actual and substantial disadvantage.” *United States v. Frady*, 456 U.S. 152, 170 (1982)
8 (emphasis omitted). To establish that a fundamental miscarriage of justice would occur if
9 a claim were not heard on the merits in federal court, a petitioner must demonstrate that
10 “a constitutional violation has probably resulted in the conviction of one who is actually
11 innocent.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

12 In its January 16, 2018 Order, this Court found that Petitioner’s claims were
13 procedurally defaulted and that Petitioner had failed to establish cause and prejudice or a
14 fundamental miscarriage of justice to excuse the procedural default. (Doc. 30 at 3; *see*
15 *also* Doc. 24 at 7-12.) The arguments in Petitioner’s Motion for Reconsideration
16 concerning cumulative error do not affect the Court’s conclusion that Petitioner’s claims
17 are procedurally defaulted. Petitioner cites *United States v. Preston*, 873 F.3d 829 (9th
18 Cir. 2017) for the proposition that the Ninth Circuit has recognized “cumulative error . . .
19 as a legitimate ground to vacate a sentence or conviction even though the cumulative
20 error, itself, is comprised of lesser errors which are procedurally defaulted.” (Doc. 32 at
21 1-2.) Contrary to Plaintiff’s characterization of the opinion, *Preston* does not address the
22 issue of procedural default. In *Preston*, the Ninth Circuit reversed a federal conviction
23 because the cumulative effect of trial errors prejudiced the defendant. 873 F.3d at 846.
24 AEDPA’s exhaustion requirements do not apply to direct appeals of federal convictions,
25 and thus the Ninth Circuit did not address those requirements in *Preston*. AEDPA’s
26 exhaustion requirements *do* apply to Petitioner’s § 2254 claims, and Petitioner does not
27 dispute that his claims are procedurally defaulted. Petitioner’s arguments about
28 cumulative error do not demonstrate cause and prejudice or a miscarriage of justice to

1 excuse the procedural default of his claims.

2 Accordingly,

3 **IT IS ORDERED** that Petitioner's Motion for Reconsideration (Doc. 32) is
4 **denied.** This case is to remain closed.

5 Dated this 31st day of January, 2018.

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Honorable Rosemary Márquez
United States District Judge