

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Daniel Martinez,

10 Petitioner,

11 v.

12 Catricia Howard,

13 Respondents.
14

No. CV-21-00230-TUC-RM

ORDER

15 Pending before the Court is Petitioner Daniel Martinez’s (“Petitioner”) Motion for
16 Reconsideration. (Doc. 31.) On November 9, 2022, this Court issued an Order adopting the
17 Report and Recommendation (“R&R”) which denied Petitioner’s Petition for Writ of
18 Habeas Corpus and Motion for Preliminary Injunction while overruling Petitioner’s
19 objection. (Doc. 26.)¹ Specifically, the Court found that Petitioner’s sentence of
20 imprisonment was correctly calculated under 18 U.S.C. § 3584(a). (*Id.* at 5.)

21 On December 22, 2022, Petitioner appealed this Court’s November 9, 2022 Order
22 to the Ninth Circuit Court of Appeals. (Doc. 28.) Petitioner’s Notice of Appeal was
23 received by the Ninth Circuit the following day. (Doc. 30.)

24 On December 29, 2022, a week after filing his Notice of Appeal, Petitioner filed a
25 Motion for Reconsideration in this Court requesting that the Court reconsider its November
26 9, 2022 Order. (Doc. 31.) Petitioner argues the Court erred in holding that *Reynolds v.*
27 *Thomas*, 603 F. 3d 1144 (9th Cir. 2010) was no longer controlling law, and that this case’s

28 ¹ The Background from the Court’s November 9, 2022 Order is incorporated by reference
into this Order.

1 interpretation of 18 U.S.C. § 3584(a) justified Petitioner’s immediate release from the
2 Bureau of Prisons. (*Id.*)

3 The filing of a notice of appeal “confers jurisdiction on the court of appeals and
4 divests the district court of its control over those aspects of the case involved in the appeal.”
5 *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). The district court is
6 therefore without jurisdiction to respond to a motion for reconsideration if filed after the
7 filing of a notice of appeal. *United States v. Vroman*, 997 F.2d 627, 627 (9th Cir. 1993).
8 Because Petitioner filed his Motion for Reconsideration a week after filing his Notice of
9 Appeal, this Court may not properly entertain Petitioner’s Motion. Accordingly,
10 Petitioner’s Motion for Reconsideration must be dismissed for lack of jurisdiction.

11 **IT IS ORDERED**

12 Petitioner’s Motion for Reconsideration (Doc. 31) is **dismissed**.

13 Dated this 17th day of January, 2023.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Honorable Rosemary Márquez
United States District Judge