

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEROME TUCKER,

1:09-cv-01199-AWI-DLB (HC)

Petitioner,

ORDER DENYING PETITIONER'S MOTION
FOR RECONSIDERATION

v.

[Doc. 25]

JAMES D. HARTLEY, Warden

Respondent.

On March 2, 2010, Magistrate Judge Beck issued a Findings and Recommendation to deny the instant petition for writ of habeas corpus on the merits. Petitioner did not file objections to the Findings and Recommendation. On June 16, 2010, the Findings and Recommendation was adopted in full and judgment was entered in favor of Respondent.

On June 25, 2010, Petitioner filed objections to the Findings and Recommendations. On July 6, 2010, the undersigned issued an order disregarding the objections as untimely. The Court pointed out that "[e]ven if Petitioner received the Findings and Recommendation on April 1, 2010 [as he stated in his June 25, 2010 objections], Petitioner waited over two months to submit objections." (ECF No. 24.)

Now pending before the Court is Petitioner's motion for reconsideration pursuant to Federal Rules of Civil Procedure 60(b). Petitioner now contends that he did not receive a copy of the Findings and Recommendation until June 18, 2010.

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1 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
2 district court. The rule permits a district court to relieve a party from a final order or judgment
3 on the grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
4 discovered evidence which by due diligence could not have been discovered in time to move for
5 a new trial under Rule 59(b) ; (3) fraud . . . of an adverse party; (4) the judgement is void; (5) the
6 judgment has been satisfied . . . ; or (6) any other reason justifying relief from the operation of
7 the judgment.” Fed.R.Civ.P. 60(b).

8 Petitioner’s claim that he did not receive the Findings and Recommendation until June
9 18, 2010, is not well-taken. Indeed, such factual contention is completely contradictory to
10 Petitioner’s prior statement in his June 25, 2010 filing that he received the Findings and
11 Recommendation on April 1, 2010, and Petitioner’s provides no explanation for the discrepancy.
12 Accordingly, there is simply no basis to justify relief from the judgment, and Petitioner’s motion
13 for reconsideration is DENIED.

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15 IT IS SO ORDERED.

16 Dated: August 24, 2010

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18 CHIEF UNITED STATES DISTRICT JUDGE
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