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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

NICHOLAS J. QUEEN,  
Petitioner,  
v.  
H. A. RIOS, JR.,  
Respondent.

Case No. 1:09-cv-01224-SKO-HC  
ORDER DENYING PETITIONER'S MOTION  
FOR RECONSIDERATION (DOC. 24)

Petitioner is a federal prisoner who proceeded pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 that was dismissed with prejudice by this Court. Pursuant to 28 U.S.C. 636(c)(1), the parties consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment. Pending before the Court is a motion for reconsideration filed on August 11, 2014, and a notice filed thereafter asking the Court to construe the motion as a new habeas petition.

I. Background

In the petition, Petitioner challenged the manner in which his

1 sentence was executed, which had involved assignment to a federal  
2 prison, transfer to a state institution to serve some state time,  
3 and then transfer to federal prison to serve his federal sentence.  
4 Petitioner challenged the lawfulness of the piecemeal nature of his  
5 sentence. The petition was dismissed as a successive petition  
6 pursuant to 28 U.S.C. § 2244(a) on February 4, 2011 (docs. 22 & 23).

7 Petitioner now seeks reconsideration of the dismissal and/or  
8 leave to amend his petition to avoid a miscarriage of justice and to  
9 raise what he characterizes as a new claim that his recommitment to  
10 federal prison after serving state time was unauthorized or  
11 unsupported by a required order of commitment.

12 II. Motion for Reconsideration pursuant to Fed. R. Civ. P. 60

13 Fed. R. Civ. P. 60(b) governs the reconsideration of final  
14 orders of the district court. Fed. R. Civ. P. 60(b) permits a  
15 district court to relieve a party from a final order or judgment on  
16 grounds including but not limited to 1) mistake, inadvertence,  
17 surprise, or excusable neglect; 2) newly discovered evidence; 3)  
18 fraud, misrepresentation, or misconduct by an opposing party; or 4)  
19 any other reason justifying relief from the operation of the  
20 judgment. Fed. R. Civ. P. 60(b). The motion for reconsideration  
21 must be made within a reasonable time, and in some instances, within  
22 one year after entry of the order. Fed. R. Civ. P. 60(c).

23 Petitioner's motion itself may be a prohibited successive  
24 petition. Section 2244(a) prohibits successive petitions as  
25 follows:

26 No circuit or district judge shall be required to  
27 entertain an application for a writ of habeas corpus  
28 to inquire into the detention of a person pursuant to  
a judgment of a court of the United States if it appears  
that the legality of such detention has been determined by

1 a judge or court of the United States on a prior application  
2 for a writ of habeas corpus, except as provided in section  
2255.

3 28 U.S.C. § 2244(a). The Ninth Circuit Court of Appeals has  
4 recognized that this provision bars successive petitions brought  
5 pursuant to § 2241. See, Barapind v. Reno, 225 F.3d 1100, 1111 (9th  
6 Cir. 2000). Although Rule 60(b) generally applies to habeas corpus  
7 proceedings, it applies in habeas proceedings only to the extent  
8 that it is not inconsistent with applicable federal statutes and  
9 rules. Gonzalez v. Crosby, 545 U.S. 524, 529-36 (2005) (Section  
10 2244(b)'s limitation on successive petitions challenging state court  
11 detentions did not bar a Rule 60(b) motion challenging a ruling that  
12 a § 2254 petition was untimely).  
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15 In his motion for reconsideration, Petitioner challenges the  
16 same issue concerning the execution of his sentence that he  
17 challenged in the petition that this Court dismissed as successive,  
18 and he seeks the same relief on the merits. To the extent that  
19 Petitioner's motion itself constitutes a prohibited successive  
20 petition, it will be dismissed.  
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22 If the merits of Petitioner's Rule 60(b) motion are properly  
23 before the Court, and assuming that the motion is not untimely,  
24 although the Court has discretion to reconsider and vacate a prior  
25 order, Barber v. Hawaii, 42 F.3d 1185, 1198 (9th Cir. 1994), motions  
26 for reconsideration are disfavored. A party seeking reconsideration  
27 must show more than a disagreement with the Court's decision and  
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1 offer more than a restatement of the cases and arguments considered  
2 by the Court before rendering the original decision. United States  
3 v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).  
4 Motions to reconsider pursuant to Rule 60(b)(1) are committed to the  
5 discretion of the trial court, Rodgers v. Watt, 722 F.2d 456, 460  
6 (9th Cir. 1983), which can reconsider interlocutory orders and re-  
7 determine applications because of an intervening change in  
8 controlling law, the availability of new evidence or an expanded  
9 factual record, or the need to correct a clear error or prevent  
10 manifest injustice, Kern-Tulare Water Dist. v. City of Bakersfield,  
11 634 F.Supp. 656, 665 (E.D.Cal. 1986), aff'd in part and rev'd in  
12 part on other grounds, 828 F.2d 514 (9th Cir. 1987).

15 A motion for reconsideration under Rule 60(b)(6) will not be  
16 granted unless the movant shows extraordinary circumstances  
17 justifying relief. Gonzalez v. Crosby, 545 U.S. 524, 536 (2005).  
18 Local Rule 230(j) provides that whenever any motion has been granted  
19 or denied in whole or in part, and a subsequent motion for  
20 reconsideration is made upon the same or any alleged different set  
21 of facts, counsel shall present to the Judge or Magistrate Judge to  
22 whom such subsequent motion is made an affidavit or brief, setting  
23 forth the material facts and circumstances surrounding each motion  
24 for which reconsideration is sought, including information  
25 concerning the previous judge and decision, what new or different  
26 facts or circumstances are claimed to exist which did not exist or  
27 were not shown upon such prior motion, what other grounds exist for  
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1 the motion, and why the facts or circumstances were not shown at the  
2 time of the prior motion.

3 Here, Petitioner has not shown any law or facts that reflect  
4 any abuse of discretion, clear error, or manifest injustice.  
5 Accordingly, Petitioner's motion for reconsideration will be denied.

6 Finally, to the extent that Petitioner seek leave to amend his  
7 petition, Petitioner's motion will be denied because the case has  
8 been dismissed. See Beaty v. Schriro, 554 F.3d 780, 782-83 & n.1  
9 (9th Cir. 2009).

10 III. Disposition

11 Based on the foregoing, it is ORDERED that Petitioner's motion  
12 for reconsideration is DISMISSED and DENIED.

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15 IT IS SO ORDERED.

16 Dated: August 15, 2014

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE