

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MIGUEL A. ZAVALA VIGAS,)	1:09-CV-01992 LJO GSA HC
)	
Petitioner,)	ORDER DENYING PETITIONER’S
)	MOTION FOR RELIEF FROM JUDGMENT
v.)	
)	[Doc. #32]
K. HARRINGTON, Warden,)	
)	
Respondent.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 10, 2010, the undersigned issued a final order dismissing the petition for violation of the statute of limitations. On September 22, 2010, Petitioner appealed to the Ninth Circuit Court of Appeals. On October 21, 2010, the appeal was denied as untimely.

On July 21, 2011, Petitioner filed the instant motion for relief from judgment pursuant to Federal Rules of Civil Procedure § 60(b).

Rule 60(b) of the Federal Rules of Civil Procedure provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Petitioner fails to meet this standard for the following reasons. First, it is now nine months since the Ninth Circuit denied the appeal; it is clearly untimely. Second, Petitioner does not set forth any arguments that have not already been considered by this Court. Petitioner’s arguments present no basis for relief.

Accordingly, Petitioner’s Motion for Relief from Judgment is DENIED.
IT IS SO ORDERED.

Dated: July 27, 2011

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE