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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LIONEL TATE, SR.,)	1:09-cv-02144-LJO-JLT HC
)	
Petitioner,)	ORDER DENYING PETITIONER'S
)	MOTION FOR RECONSIDERATION
v.)	(Doc. 22)
)	
JAMES D. HARTLEY, Warden,)	
)	
Respondent.)	

PROCEDURAL HISTORY

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The instant federal petition for writ of habeas corpus was filed on December 10, 2009. (Doc. 1). In his petition, Petitioner contends that his inability to earn half-time credits based on a sentence enhancement for a prior conviction violates the plea agreement in that prior conviction. On April 29, 2010, the Court ordered Respondent to file a response. (Doc. 8). On July 29, 2010, Respondent filed a motion to dismiss the petition because Petitioner's claims sound only in state law. (Doc. 15). On August 11, 2010, Petitioner filed his opposition to the motion to dismiss. (Doc. 16). On October 21, 2010, the Magistrate Judge issued Findings and Recommendations to grant Respondent's motion to dismiss for failure to state a federal habeas claim. (Doc. 18). On November 1, 2010, Petitioner filed his objections to the Findings and Recommendations. (Doc. 19). On November 19, 2010, the District Judge adopted the Findings and

1 Recommendations, entered judgment against Petitioner, and order the Clerk of the Court to close the
2 file. (Doc. 20). On December 1, 2010, Petitioner filed the instant motion for reconsideration,
3 contending that he had established in his petition and opposition to the motion to dismiss that his
4 claim was based upon federal law. (Doc. 22).

5 DISCUSSION

6 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
7 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment on
8 grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence
9 . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied . .
10 . or (6) any other reason justifying relief from the operation of the judgment.” Fed. R. Civ. P. 60(b).
11 A motion under Rule 60(b) must be made within a reasonable time, in any event “not more than one
12 year after the judgment, order, or proceeding was entered or taken.” Id.

13 Moreover, when filing a motion for reconsideration, Local Rule 230(j) requires a party to
14 show the “new or different facts or circumstances claimed to exist which did not exist or were not
15 shown upon such prior motion, or what other grounds exist for the motion.” Motions to reconsider
16 are committed to the discretion of the trial court. Combs v. Nick Garin Trucking, 825 F.2d 437, 441
17 (D.C.Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc). To succeed, a party
18 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
19 decision. See, e.g., Kern-Tulare Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal.
20 1986), *aff’d in part and rev’d in part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

21 Here, Petitioner has failed to meet any of the requirements for granting a motion for
22 reconsideration: He has not shown “mistake, inadvertence, surprise, or excusable neglect;” he has
23 certainly not shown either newly discovered evidence or fraud; the judgment has not been shown to
24 be either void or satisfied; and Petitioner has not presented any other reasons justifying relief from
25 judgment. Moreover, pursuant to the Court’s Local Rules, Petitioner has not “new or different facts
26 or circumstances claimed to exist which did not exist or were not shown upon such prior motion, or
27 what other grounds exist for the motion.” Local Rule 230(j).

28 Indeed, the arguments raised in the instant motion for reconsideration are mere repetitions of

1 the arguments Petitioner has already raised in his opposition to the motion to dismiss and his
2 objections to the Magistrate Judge's Findings and Recommendations. This Court had already read,
3 considered, and rejected those very arguments prior to adopting the Magistrate Judge's Findings and
4 Recommendations. Because the motion for reconsideration provides no new evidence or
5 circumstances that would satisfy the requirements of Rule 60(b), it must therefore be denied.

6 **ORDER**

7 Accordingly, it is HEREBY ORDERED that Petitioner's motion for reconsideration (Doc.
8 22), is DENIED.

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14 IT IS SO ORDERED.

15 **Dated:** April 21, 2011

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

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