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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL J. MARTINEZ,
Petitioner,

v.

MATTHEW CATE,
Respondent.

Case No. 1:11-cv-00572 AWI MJS (HC)
**ORDER DENYING MOTION FOR
RECONSIDERATION**
(Doc. 34)

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

On March 27, 2015, the undersigned denied the petition, issued a limited certificate of appealability as to claim three, and declined to issue a certificate of appealability for the remaining claims. On April 20, 2015, Petitioner filed a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e).

I. LEGAL STANDARD

Relief under Rule 59(e) is appropriate when the district court is presented with newly discovered evidence, the district court committed clear error, or a change in controlling law intervenes. See Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). To avoid being frivolous, such a motion must provide a valid ground for reconsideration. See MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986). A motion to alter or amend a judgment pursuant to Rule 59(e) "must

1 be filed no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e).
2 Petitioner filed the motion 12 days after the judgment was filed. Accordingly, the motion
3 is timely.

4 **II. DISCUSSION**

5 In his motion for reconsideration, Petitioner asserts that the Court erred in denying
6 claims three, six, and seven of the petition. However, Petitioner does not set forth any
7 arguments or evidence that have not already been considered by this Court. Petitioner
8 asserts that the Court committed error by determining that the state court's denial of the
9 claims was reasonable. Petitioner argues that the Court found that it was possible that
10 the evidence indicated there was further interrogation after the invocation of Petitioner's
11 Miranda rights, but unreasonably provided deference to the state court decision denying
12 the claim. Likewise, Petitioner contends that the Court incorrectly determined that the
13 statements by the prosecutor implicating that Petitioner was the party that tagged the
14 street in front of the victim's house was not prosecutorial misconduct. Finally, Petitioner
15 argues that the Court improperly denied his claim that instructional error violated his right
16 to a fair trial. Petitioner presented similar arguments in his Petition, which the Court,
17 upon review, found insufficient to warrant relief. His contentions in his motion for
18 reconsideration fare no better. Petitioner has not presented newly discovered evidence,
19 shown that the district court committed clear error, or that a change in controlling law to
20 warrant amending or altering the judgment.

21 **III. ORDER**

22 IT IS HEREBY ORDERED that Petitioner's motion to alter or amend the judgment
23 (Doc. 34) is DENIED.

24
25 IT IS SO ORDERED.

26 Dated: June 29, 2015



27 SENIOR DISTRICT JUDGE
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