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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER WILLIAMS,  
Petitioner,  
  
v.  
  
RICK HILL,  
Respondent.

Case No. 1:12-cv-01807-LJO-BAM-HC  
  
FINDINGS AND RECOMMENDATIONS TO  
DENY PETITIONER'S MOTION FOR  
RECONSIDERATION OF THE COURT'S  
DISMISSAL OF HIS PETITION AS  
SUCCESSIVE (DOC. 16) AND TO DECLINE  
TO ISSUE A CERTIFICATE OF  
APPEALABILITY

**OBJECTIONS DEADLINE:**  
**THIRTY (30) DAYS**

Petitioner is a state prisoner who proceeded pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he challenged his homicide conviction. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

I. Background

On December 19, 2012, the Court adopted the Magistrate Judge's findings and recommendations regarding screening the petition, dismissed the petition as a successive petition, and declined to issue a certificate of appealability; judgment was entered. (Docs. 7, 9, 10.) Petitioner filed a notice of appeal, but on November 21,

1 2013, Petitioner's request for a certificate of appealability was  
2 denied by the appellate court, and on February 5, 2014, the Ninth  
3 Circuit Court of Appeals referred to the case in a later order as  
4 being closed. (Doc. 4.)

5 Presently pending before the Court is Petitioner's motion,  
6 which was filed on March 5, 2014, and is entitled, "NOTICE OF MOTION  
7 60(B)(6) TO THE DENIAL OF REVIEW OF PROCEDURAL DEFAULT MODIFICATION  
8 OF SENTENCE TO AN DETERMINATE PRISON TERM," which the Court  
9 CONSTRUES as a motion for reconsideration of the Court's dismissal  
10 of Petitioner's petition.

11 II. Motion for Reconsideration

12 In the motion, Petitioner asks for modification of his sentence  
13 based on insufficient evidence and excessive punishment because the  
14 judgment was based on a violation of Petitioner's rights under the  
15 Fifth, Sixth, and Fourteenth Amendments. Petitioner argues that he  
16 suffered the ineffective assistance of counsel in the form of his  
17 counsel's failure to raise issues regarding the sufficiency of the  
18 evidence and the application of state law principles involving  
19 malice and felony murder. (Doc. 16.) It is clear that Petitioner  
20 is challenging the same conviction and judgment that was the basis  
21 of the petition that this Court dismissed and that further was the  
22 subject of Petitioner's unsuccessful appeal.

23 Federal Rule of Civil Procedure 60(b) governs the  
24 reconsideration of final orders of the district court. The rule  
25 permits a district court to relieve a party from a final order or  
26 judgment on grounds including but not limited to 1) mistake,  
27 inadvertence, surprise, or excusable neglect; 2) newly discovered  
28 evidence; 3) fraud, misrepresentation, or misconduct by an opposing

1 party; or 4) any other reason justifying relief from the operation  
2 of the judgment. Fed. R. Civ. P. 60(b). The motion for  
3 reconsideration must be made within a reasonable time, and in some  
4 instances, within one year after entry of the order. Fed. R. Civ.  
5 P. 60(c).

6 Rule 60(b) generally applies to habeas corpus proceedings.  
7 See, Gonzalez v. Crosby, 545 U.S. 524, 530-36 (2005). Although the  
8 Court has discretion to reconsider and vacate a prior order, Barber  
9 v. Hawaii, 42 F.3d 1185, 1198 (9th Cir. 1994), motions for  
10 reconsideration are disfavored. A party seeking reconsideration  
11 must show more than a disagreement with the Court's decision and  
12 offer more than a restatement of the cases and arguments considered  
13 by the Court before rendering the original decision. United States  
14 v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).  
15 Motions to reconsider pursuant to Rule 60(b)(1) are committed to the  
16 discretion of the trial court, Rodgers v. Watt, 722 F.2d 456, 460  
17 (9th Cir. 1983), which can reconsider interlocutory orders and re-  
18 determine applications because of an intervening change in  
19 controlling law, the availability of new evidence or an expanded  
20 factual record, or the need to correct a clear error or prevent  
21 manifest injustice, Kern-Tulare Water Dist. v. City of Bakersfield,  
22 634 F.Supp. 656, 665 (E.D.Cal. 1986), aff'd in part and rev'd in  
23 part on other grounds, 828 F.2d 514 (9th Cir. 1987).

24 Local Rule 230(j) provides that whenever any motion has been  
25 granted or denied in whole or in part, and a subsequent motion for  
26 reconsideration is made upon the same or any alleged different set  
27 of facts, counsel shall present to the Judge or Magistrate Judge to  
28 whom such subsequent motion is made an affidavit or brief, as

1 appropriate, setting forth the material facts and circumstances  
2 surrounding each motion for which reconsideration is sought,  
3 including information concerning the previous judge and decision,  
4 what new or different facts or circumstances are claimed to exist  
5 which did not exist or were not shown upon such prior motion, what  
6 other grounds exist for the motion, and why the facts or  
7 circumstances were not shown at the time of the prior motion.

8 Here, Petitioner has not shown any law or facts that reflect  
9 any abuse of discretion, clear error, or manifest injustice.

10 Petitioner argues that his failure to raise issues earlier  
11 should be excused because he suffered the ineffective assistance of  
12 counsel. However, Petitioner's claims clearly relate to the same  
13 homicide conviction that this Court has determined was previously  
14 the subject of a petition, and thus Petitioner continues to attempt  
15 to bring a successive petition without the permission of the Ninth  
16 Circuit Court of Appeals.

17 Because the petition was filed after April 24, 1996, the  
18 effective date of the Antiterrorism and Effective Death Penalty Act  
19 of 1996 (AEDPA), the AEDPA applies in this proceeding. Lindh v.  
20 Murphy, 521 U.S. 320, 327 (1997), cert. denied, 522 U.S. 1008  
21 (1997); Furman v. Wood, 190 F.3d 1002, 1004 (9th Cir. 1999).

22 Under the AEDPA, a federal court must dismiss a second or  
23 successive petition that raises the same grounds as a prior  
24 petition. 28 U.S.C. § 2244(b)(1). The Court must also dismiss a  
25 second or successive petition raising a new ground concerning the  
26 same judgment unless the petitioner can show that 1) the claim rests  
27 on a new, retroactive, constitutional right or 2) the factual basis  
28 of the claim was not previously discoverable through due diligence,

1 and the new facts establish by clear and convincing evidence that  
2 but for the constitutional error, no reasonable factfinder would  
3 have found the applicant guilty of the underlying offense. 28  
4 U.S.C. § 2244(b) (2) (A) - (B).

5 However, it is not the district court that decides whether a  
6 second or successive petition meets these requirements, which allow  
7 a petitioner to file a second or successive petition. Section  
8 2244(b) )3) (A) provides, "Before a second or successive application  
9 permitted by this section is filed in the district court, the  
10 applicant shall move in the appropriate court of appeals for an  
11 order authorizing the district court to consider the application."  
12 In other words, a petitioner must obtain leave from the Ninth  
13 Circuit before he or she can file a second or successive petition in  
14 the district court. See, Felker v. Turpin, 518 U.S. 651, 656-57  
15 (1996). This Court must dismiss any claim presented in a second or  
16 successive habeas corpus application under section 2254 that was  
17 presented in a prior application unless the Court of Appeals has  
18 given Petitioner leave to file the petition. 28 U.S.C. §  
19 2244(b) (1). This limitation has been characterized as  
20 jurisdictional. Burton v. Stewart, 549 U.S. 147, 152 (2007); Cooper  
21 v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001).

22 Thus, it appears that this Court lacks jurisdiction to proceed  
23 with the petition. Petitioner has not shown any basis for relief  
24 pursuant to Rule 60.

### 25 III. Certificate of Appealability

26 Unless a circuit justice or judge issues a certificate of  
27 appealability, an appeal may not be taken to the Court of Appeals  
28 from the final order in a habeas proceeding in which the detention

1 complained of arises out of process issued by a state court. 28  
2 U.S.C. § 2253(c)(1)(A); Miller-El v. Cockrell, 537 U.S. 322, 336  
3 (2003). A district court must issue or deny a certificate of  
4 appealability when it enters a final order adverse to the applicant.  
5 Rule 11(a) of the Rules Governing Section 2254 Cases.

6 A certificate of appealability may issue only if the applicant  
7 makes a substantial showing of the denial of a constitutional right.  
8 § 2253(c)(2). Under this standard, a petitioner must show that  
9 reasonable jurists could debate whether the petition should have  
10 been resolved in a different manner or that the issues presented  
11 were adequate to deserve encouragement to proceed further. Miller-  
12 El v. Cockrell, 537 U.S. at 336 (quoting Slack v. McDaniel, 529 U.S.  
13 473, 484 (2000)). A certificate should issue if the Petitioner  
14 shows that jurists of reason would find it debatable whether: (1)  
15 the petition states a valid claim of the denial of a constitutional  
16 right, and (2) the district court was correct in any procedural  
17 ruling. Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

18 In determining this issue, a court conducts an overview of the  
19 claims in the habeas petition, generally assesses their merits, and  
20 determines whether the resolution was debatable among jurists of  
21 reason or wrong. Id. An applicant must show more than an absence  
22 of frivolity or the existence of mere good faith; however, the  
23 applicant need not show that the appeal will succeed. Miller-El v.  
24 Cockrell, 537 U.S. at 338.

25 Here, it does not appear that reasonable jurists could debate  
26 whether the petition should have been resolved in a different  
27 manner. Petitioner has not made a substantial showing of the denial  
28 of a constitutional right.

