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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLARENCE LEON DEWS,

 Petitioner,

 v.

MARTIN BITER, Warden of Kern
Valley State Prison,

 Respondent.

Case No. 1:13-cv-00626-AWI-SKO-HC

FINDINGS AND RECOMMENDATIONS TO
DENY PETITIONER'S MOTION FOR
RECONSIDERATION OF THE COURT'S
DENIAL OF A CERTIFICATE OF
APPEALABILITY (DOC. 24)

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. The matter has been referred to the Magistrate
Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.
On August 2, 2013, 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, 22,
23.) Pending before the Court is Petitioner's motion for

1 reconsideration of the Court's denial of a motion for a certificate
2 of appealability, which was filed on August 23, 2012.

3 In the motion, Petitioner appears to acknowledge that the Ninth
4 Circuit Court of Appeals is the entity that properly determines
5 whether a petitioner should be permitted to proceed with a
6 successive petition. Although Petitioner mentions "mental
7 retardation," he has not shown that he suffers mental retardation or
8 that any such condition would warrant issuance of a certificate of
9 appealability with respect to this Court's previous dismissal of his
10 successive petition.

11 A motion for reconsideration is treated as a motion to alter or
12 amend judgment under Fed. R. Civ. P. 59(e) if it is filed within the
13 time limit set by Rule 59(e). United States v. Nutri-cology, Inc.,
14 982 F.2d 394, 397 (9th Cir. 1992). Otherwise, it is treated as a
15 motion pursuant to Fed. R. Civ. P. 60(b) for relief from a judgment
16 or order. American Ironworks & Erectors, Inc. v. North American
17 Const. Corp., 248 F.3d 892, 989-99 (9th Cir. 2001). A motion to
18 alter or amend a judgment pursuant to Fed. R. Civ. P. 59(e) "must be
19 filed no later than 28 days after the entry of the judgment." Fed.
20 R. Civ. P. 59(e).

21 I. Relief pursuant to Fed. R. Civ. P. 59(e)

22 Petitioner does not state grounds sufficient to warrant relief
23 pursuant to Fed. R. Civ. P. 59(e). Such relief is appropriate when
24 there are highly unusual circumstances, the district court is
25 presented with newly discovered evidence, the district court
26 committed clear error, or a change in controlling law intervenes.
27 School Dist. No. 1J, Multnomah County, Oregon v. AcandS, Inc., 5
28 F.3d 1255, 1262 (9th Cir. 1993). To avoid being frivolous, such a

1 motion must provide a valid ground for reconsideration. See, MCIC
2 Indemnity Corp. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986).

3 Here, there has been no demonstration of unusual circumstances,
4 newly discovered evidence, or intervening change in controlling law.
5 Thus, the dismissal of Petitioner's petition was not clearly
6 erroneous.

7 II. Relief pursuant to Fed. R. Civ. P. 60

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

19 Rule 60(b) generally applies to habeas corpus proceedings.
20 See, Gonzalez v. Crosby, 545 U.S. 524, 530-36 (2005). Although the
21 Court has discretion to reconsider and vacate a prior order, Barber
22 v. Hawaii, 42 F.3d 1185, 1198 (9th Cir. 1994), motions for
23 reconsideration are disfavored. A party seeking reconsideration
24 must show more than a disagreement with the Court's decision and
25 offer more than a restatement of the cases and arguments considered
26 by the Court before rendering the original decision. United States
27 v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).
28 Motions to reconsider pursuant to Rule 60(b)(1) are within the

1 discretion of the trial court, Rodgers v. Watt, 722 F.2d 456, 460
2 (9th Cir. 1983), which can reconsider interlocutory orders and re-
3 determine applications because of an intervening change in
4 controlling law, the availability of new evidence or an expanded
5 factual record, or the need to correct a clear error or prevent
6 manifest injustice, Kern-Tulare Water Dist. v. City of Bakersfield,
7 634 F.Supp. 656, 665 (E.D.Cal. 1986), aff'd in part and rev'd in
8 part on other grounds, 828 F.2d 514 (9th Cir. 1987).

9 Local Rule 230(j) provides that whenever any motion has been
10 granted or denied in whole or in part, and a subsequent motion for
11 reconsideration is made upon the same or any alleged different set
12 of facts, counsel shall submit an affidavit or brief, as
13 appropriate, setting forth the material facts and circumstances
14 surrounding each motion for which reconsideration is sought,
15 including information concerning the previous judge and decision,
16 the new or different facts or circumstances which did not exist or
17 were not shown in the prior motion, any other grounds for the
18 motion, and why the facts or circumstances were not shown at the
19 time of the prior motion.

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

22 III. Recommendations

23 Based on the foregoing, it is RECOMMENDED that Petitioner's
24 motion for reconsideration of the Court's denial of a certificate of
25 appealability be DENIED.

26 These findings and recommendations are submitted to the United
27 States District Court Judge assigned to the case, pursuant to the
28 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of the Local

1 Rules of Practice for the United States District Court, Eastern
2 District of California. Within thirty (30) days after being served
3 with a copy, any party may file written objections with the Court
4 and serve a copy on all parties. Such a document should be
5 captioned "Objections to Magistrate Judge's Findings and
6 Recommendations." Replies to the objections shall be served and
7 filed within fourteen (14) days (plus three (3) days if served by
8 mail) after service of the objections. The Court will then review
9 the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b) (1) (C).
10 The parties are advised that failure to file objections within the
11 specified time may waive the right to appeal the District Court's
12 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: August 27, 2013

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE