

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

GUILLERMO VERA,
Petitioner,
v.
CONNIE GIPSON,
Respondent.

Case No. 1:13-cv-00814-AWI-SKO HC
ORDER ADOPTING THE FINDINGS AND
RECOMMENDATION FOR THE DENIAL OF
THE MOTION TO SET ASIDE JUDGMENT
AND DENIAL OF A CERTIFICATE OF
APPEALABILITY

(Docs. 44 and 45)

Petitioner is a state prisoner serving a determinate term for aggravated assault and an indeterminate term of thirty years to life for second degree murder. On May 30, 2013, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred the matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

On July 16, 2013, following preliminary screening of the petition, the Magistrate Judge recommended that the Court dismiss Petitioner's first, second, third, and fourth claims, none of which were cognizable in a federal habeas proceeding.¹ The Court adopted the recommendations on November 12, 2013, and referred the matter back to the Magistrate Judge for further proceedings on the remaining claim of a violation of due process in a parole hearing. On August 1, 2014, following consideration of matters addressed in the response and traverse, the Magistrate Judge recommended that the Court dismiss the petition for writ of habeas corpus without leave to amend. The Court

¹ The dismissed claims included California state law claims and claims regarding conditions of confinement.

1 adopted the Magistrate Judge's recommendation on September 12, 2014, and the Clerk of Court
2 entered judgment for Respondent.

3 On January 8, 2015, Petitioner moved to vacate the judgment. Construing the motion to be
4 governed by Federal Rule of Civil Procedure 60(b), the Magistrate Judge found that Petitioner
5 advanced no grounds justifying relief from judgment and recommended that the motion be denied.
6 The Findings and Recommendation, which was filed and served on all parties on February 20, 2015,
7 provided that objections could be served within thirty days and replies within fourteen days after the
8 filing of any objections.

9 Following multiple extensions of time, Petitioner filed objections on July 7, 2015. The
10 objections re-argued the five claims set forth in the petition for writ of habeas corpus without
11 articulating any specific basis for setting aside the judgment. Emphasizing that Petitioner's
12 objections mainly restated Petitioner's claims regarding the conditions of his confinement,
13 Respondent answered that Petitioner had not presented any basis for setting aside the judgment.

14 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), having carefully reviewed the
15 entire file *de novo* and considered Petitioner's objections, the Court finds that the Findings and
16 Recommendation filed on February 20, 2015 is supported by the record and proper analysis. The
17 Court declines to modify the Findings and Recommendation based on any point raised in the
18 objections.

19 Accordingly, **IT IS HEREBY ORDERED** that:

- 20 1. The Findings and Recommendation filed February 20, 2015 is **ADOPTED** in full;
- 21 2. Petitioner's motion to reopen the September 12, 2014 judgment is hereby **DENIED**; and
- 22 3. The Court **DECLINES** to issue a certificate of appealability.

23
24 IT IS SO ORDERED.

25 Dated: July 24, 2015


26 SENIOR DISTRICT JUDGE