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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LEVI MICAH BARTER,)	1:14-cv-00151-SAB-HC
)	
Petitioner,)	ORDER DENYING MOTION FOR
)	RECONSIDERATION
v.)	
)	
JERRY BROWN, Governor, et al.,)	[ECF No. 13]
)	
Respondents.)	
)	
)	
)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of mandamus pursuant to 28 U.S.C. § 1361. On February 21, 2014, he consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

On February 25, 2014, the Court dismissed the petition. Judgment was entered the same day. On March 10, 2014, Petitioner filed a motion for reconsideration pursuant to Federal Rules of Civil Procedure § 60(b).

Rule 60(b) of the Federal Rules of Civil Procedure provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier

1 judgment that has been reversed or vacated; or applying it prospectively is no
2 longer equitable; or
(6) any other reason that justifies relief.

3 Petitioner's arguments do not merit reconsideration of the dismissal. In his petition, Petitioner
4 claimed that the warden of Kern Valley State Prison was refusing to adjudicate his "602" appeals in a
5 "draconian, arrogant manner." (Petition at 1.) He requested that the Court issue a writ of mandamus
6 directing the warden to "'process' and 'answer' all actions requested on [Petitioner's] screened out
7 '602.'" (Petition at 1.) Petitioner complained that the warden by virtue of his actions was obfuscating
8 his attempt to seek the earliest possible release date he was entitled to under Apprendi v. New Jersey,
9 530 U.S. 466 (2000) and California Proposition 36 of 2012.

10 In his motion for reconsideration, Petitioner now contends his request for writ of mandamus is
11 only one component of the case he seeks to present. He states he is also seeking a petition for writ of
12 habeas corpus and he cites Apprendi in support. The Court is not persuaded. To the extent Petitioner
13 seeks a writ of mandamus directing the warden of his institution to perform his duties as required
14 under California law, the Court is without jurisdiction. See Pennhurst State Sch. & Hosp. v.
15 Halderman, 465 U.S. 89, 106 (1984) (11th Amendment prohibits federal district court from directing
16 state officials in the performance of their duties). To the extent Petitioner seeks to challenge his
17 underlying conviction under Apprendi, he must do so in the district where he was convicted. Since
18 Petitioner was convicted in the Los Angeles County Superior Court, the proper venue for a habeas
19 action is the Central District of California. If Petitioner desires to file a petition for writ of habeas
20 corpus, he must do so in the Central District using the proper forms as prescribed by the local rules of
21 the Central District or as set forth in the Rules Governing Section 2254 Cases.

22 Accordingly, Petitioner's motion for reconsideration is DENIED.

23
24 IT IS SO ORDERED.

25 Dated: March 13, 2014

26 
27 _____
28 UNITED STATES MAGISTRATE JUDGE