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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MIGUEL RICO,)	1:14-cv-00585-BAM (PC)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S
)	MOTION FOR RELIEF FROM JUDGMENT
v.)	(ECF Nos. 12, 13)
)	
CONNIE GIBSON, et al.,)	ORDER DIRECTING CLERK OF COURT
)	TO VACATE THE JUDGMENT AND
Defendants.)	DISMISSAL ORDER AND REOPEN
)	ACTION
)	(ECF Nos. 10, 11)
)	
)	

Plaintiff Miguel Rico (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, initiated this civil rights action pursuant to 42 U.S.C. § 1983 on April 23, 2014. Plaintiff consented to the jurisdiction of a United States Magistrate Judge. (ECF No. 5.)

On March 23, 2015, the Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A, and issued an order directing Plaintiff to show cause why this action should not be dismissed based on claim preclusion. The Court ordered Plaintiff to file a response within twenty-one days and advised him that his failure to comply with the order would result in the action being dismissed, without prejudice, for failure to comply. (ECF No. 9.)

On April 24, 2015, the Court dismissed this action, without prejudice, based on Plaintiff’s failure to obey the Court’s order of March 23, 2015. (ECF No. 10.) Judgment was entered on the same date. (ECF No. 11.)

1 On May 14, 2015, Plaintiff filed a notice regarding submission of a late response to the
2 show cause order, along with his response to the show cause order. (ECF Nos. 12, 13.) The
3 Court construes Plaintiff's notice to be a request for relief from judgment, pursuant to Rule 60(b)
4 of the Federal Rules of Civil Procedure. In his papers, Plaintiff reports that he submitted a
5 timely response to the order to show cause on April 14, 2015, but the response was returned to
6 him on May 4, 2015, because he put the wrong address on the legal envelope. (ECF No. 13.)

7 Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, "[o]n motion and just
8 terms, the court may relieve a party or its legal representative from a final judgment, order, or
9 proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;. .
10 . or (6) any other reason that justifies relief." Plaintiff seeks reconsideration on the basis of
11 mistake.

12 The Court has considered Plaintiff's moving papers, and finds that they support relief
13 under Rule 60(b). Consistent with Plaintiff's letter, Plaintiff's response is signed and dated April
14 14, 2015, which was prior to the expiration of the show cause deadline. Plaintiff therefore
15 should not be penalized for failure to obey a court order because he mistakenly used the wrong
16 address.

17 Accordingly, it is HEREBY ORDERED as follows:

- 18 1. Plaintiff's motion for relief from judgment, filed May 14, 2015, is GRANTED;
- 19 2. The Clerk of the Court is directed to VACATE the judgment and dismissal order
20 entered on April 24, 2015, and reopen this action; and
- 21 3. Following consideration of Plaintiff's response to the order to show cause, the
22 undersigned shall issue an order regarding the claim preclusive effect, if any, of Plaintiff's state
23 habeas corpus action.

24
25 IT IS SO ORDERED.

26 Dated: May 28, 2015

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE