

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEMAJ LEON FRAZIER,
Petitioner,

v.

W. L. MONTGOMERY,
Respondent.

No. 1:14-cv-01146-LJO-JLT (HC)
**ORDER DENYING PETITIONER'S
MOTION TO REOPEN CASE**

(Doc. 48)

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 8, 2016, the Court denied the petition for writ of habeas corpus and entered judgment, thereby terminating the case.

On September 8, 2016, Petitioner filed a motion to reopen the case. (Doc. 48.) He claims he is actually innocent and sets forth seven additional grounds for relief.

DISCUSSION

Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment.”

1 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, in any
2 event “not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

3 Moreover, when filing a motion for reconsideration, Local Rule 230(j) requires a party to
4 show the “new or different facts or circumstances claimed to exist which did not exist or were not
5 shown upon such prior motion, or what other grounds exist for the motion.” Motions to
6 reconsider are committed to the discretion of the trial court. Combs v. Nick Garin Trucking, 825
7 F.2d 437, 441 (D.C.Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc). To
8 succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to
9 reverse its prior decision. See, e.g., Kern-Tulare Water Dist. v. City of Bakersfield, 634 F.Supp.
10 656, 665 (E.D.Cal. 1986), *aff’d in part and rev’d in part on other grounds*, 828 F.2d 514 (9th Cir.
11 1987).

12 Here, petitioner fails to meet the requirements for granting a motion for reconsideration:
13 He has not shown “mistake, inadvertence, surprise, or excusable neglect;” he has certainly not
14 shown the existence of either newly discovered evidence or fraud; he has not established that the
15 judgment is either void or satisfied; and, finally, petitioner has not presented any other reasons
16 justifying relief from judgment. Moreover, pursuant to the Court’s Local Rules, petitioner has not
17 shown “new or different facts or circumstances claimed to exist which did not exist or were not
18 shown upon such prior motion, or what other grounds exist for the motion.” Local Rule 230(j).

19 Petitioner argues that he is actually innocent and therefore he is not procedurally barred
20 from presenting his claims. Petitioner is advised that his initial petition was not procedurally
21 defaulted; it was denied on the merits. In addition, he does not present a claim of actual
22 innocence. Instead, he presents seven new grounds for relief including claims based on failure to
23 disclose favorable evidence, ineffective assistance of counsel, and prosecutorial misconduct. The
24 Court finds that Petitioner is attempting to bring a successive petition for writ of habeas corpus.

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

1 discoverable through due diligence, and these new facts establish by clear and convincing
2 evidence that but for the constitutional error, no reasonable factfinder would have found the
3 applicant guilty of the underlying offense. 28 U.S.C. § 2244(b)(2)(A)-(B). However, it is not the
4 district court that decides whether a second or successive petition meets these requirements.

5 Section 2244 (b)(3)(A) provides: "Before a second or successive application permitted by
6 this section is filed in the district court, the applicant shall move in the appropriate court of
7 appeals for an order authorizing the district court to consider the application." In other words,
8 Petitioner must obtain leave from the Ninth Circuit before he can file a second or successive
9 petition in district court. See Felker v. Turpin, 518 U.S. 651, 656-657 (1996). This Court must
10 dismiss any second or successive petition unless the Court of Appeals has given Petitioner leave
11 to file the petition because a district court lacks subject-matter jurisdiction over a second or
12 successive petition. Burton v. Stewart, 549 U.S. 147, 152 (2007); Cooper v. Calderon, 274 F.3d
13 1270, 1274 (9th Cir. 2001).

14 Because the current petition was filed after April 24, 1996, the provisions of the
15 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) apply to Petitioner's current
16 petition. Lindh v. Murphy, 521 U.S. 320, 327 (1997). Petitioner makes no showing that he has
17 obtained prior leave from the Ninth Circuit to file his successive petition attacking the conviction.
18 That being so, this Court has no jurisdiction to consider Petitioner's renewed application for relief
19 from that conviction under Section 2254 and must dismiss the petition. See Greenawalt, 105 F.3d
20 at 1277; Nunez, 96 F.3d at 991.

21 ORDER

22 Accordingly, it is HEREBY ORDERED that Petitioner's motion for reconsideration (Doc.
23 48) is DENIED.

24 IT IS SO ORDERED.

25 Dated: September 11, 2017

26 /s/ Lawrence J. O'Neill
27 UNITED STATES CHIEF DISTRICT JUDGE