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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. 51)

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. 51.) He sets forth thirteen additional grounds for relief.

DISCUSSION

Federal Rule of Civil Procedure 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.” Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a

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

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

18 Petitioner attempts to raise thirteen new grounds for relief. The Court finds that Petitioner
19 is attempting to bring a successive petition for writ of habeas corpus. A federal court must dismiss
20 a second or successive petition that raises the same grounds as a prior petition. 28 U.S.C. §
21 2244(b)(1). The court must also dismiss a second or successive petition raising a new ground
22 unless the petitioner can show that 1) the claim rests on a new, retroactive, constitutional right or
23 2) the factual basis of the claim was not previously discoverable through due diligence, and these
24 new facts establish by clear and convincing evidence that but for the constitutional error, no
25 reasonable factfinder would have found the applicant guilty of the underlying offense. 28 U.S.C.
26 § 2244(b)(2)(A)-(B). However, it is not the district court that decides whether a second or
27 successive petition meets these requirements.

28 Section 2244 (b)(3)(A) provides: "Before a second or successive application permitted by

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

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

16 **ORDER**

17 Accordingly, it is HEREBY ORDERED that Petitioner's motion to reopen the case (Doc.
18 51) is DENIED.

19
20 IT IS SO ORDERED.

21 Dated: January 9, 2019

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