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

BARRY FRANK WILSON,)	Case No.: 1:14-cv-01446-LJO-JLT
Petitioner,)	
v.)	ORDER DENYING PETITIONER’S MOTION
)	FOR RECONSIDERATION AND/OR REQUEST
SUPERIOR COURT OF CALIFORNIA,)	FOR ISSUANCE OF A WRIT OF QUO
Respondent.)	WARRANTO (Doc. 10)
)	

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

PROCEDURAL HISTORY

The instant petition was filed on September 12, 2014, challenging proceedings against him in the state court for violations of the California’s Vehicle Code. (Doc. 1). On September 30, 2014, the Court issued an Order to Show Cause why the petition should not be dismissed as completely unexhausted. (Doc. 4). On October 28, 2014, Petitioner filed a response in which he argued that the only entity with jurisdiction over him was God, but otherwise failing to address exhaustion. (Doc. 5). On November 10, 2014, the Magistrate Judge entered Findings and Recommendations to dismiss the petition as unexhausted. (Doc. 6). Over Petitioner’s objections, on December 10, 2014, this Court adopted those Findings and Recommendations, entered judgment against Petitioner, and ordered the file closed. (Docs. 8; 9). On February 11, 2015, Petitioner filed the instant motion, which is styled as

1 a request for issuance of a writ of quo warranto, arguing in essence that the state court lacks
2 jurisdiction over Petitioner to prosecute purported violations of the California’s Vehicle Code. (Doc.
3 10).

4 **DISCUSSION**

5 A. Writs of Quo Warranto

6 Petitioner lacks standing to proceed with a request for issuance of a writ of quo warranto in this
7 Court. “Quo warranto is an ancient writ used by the King of England to determine if an individual's
8 claim to an office or franchise is well-founded. If the individual is found to be in unlawful possession
9 of the office, the individual is ousted.” Jesinger v. Nev. Fed. Credit Union, 24 F.3d 1127, 1131 (9th
10 Cir.1994) (citations omitted). It is a right of action “inherently in the Government ...” Territory of
11 Neb. v. Lockwood, 70 U.S. 236, 240 (1865). Because “[i]t appears from case law that in federal court,
12 the writ may be sought only by the United States, and not by private individuals,” Petitioner does not
13 have standing to bring a writ of quo warranto under federal law and therefore has not asserted a proper
14 basis for federal jurisdiction over his quo warranto claim. Allah v. Robinson, 2007 WL 2220258, at
15 *2 (W.D.Wash. July 31, 2007) (citing Johnson v. Manhattan Ry. Co., 289 U.S. 479, 502
16 (1933))(emphasis supplied); see also United States v. Machado, 306 F.Supp. 995, 1000
17 (N.D.Cal.1969); Bhambra v. County of Nevada, 2010 WL 3258836, at *3 (E.D. Cal. Aug. 16, 2010).

18 Moreover, as mentioned, such writs are properly brought only in connection with proceedings
19 over an individual’s right to hold an office or position. Johnson, 289 U.S. at 502; Newman v. Frizell,
20 238 U.S. 537 (1915); Barany v. Butler, 670 F.2d 726, 735 (7th Cir. 1982); Cizek v. Davis, 2010 WL
21 5437286, *3 (M.D. Penn. Nov. 29, 2010). Since Petitioner is not challenging the state judges’ right to
22 hold their offices as Superior Court judges, but only their statutory and constitutional authority to
23 preside over proceedings brought pursuant to California’s Vehicle Code, a writ of quo warrant is
24 inappropriate.

25 B. Motion For Reconsideration

26 Liberally construing Petitioner’s motion as a motion for reconsideration pursuant to Rule
27 60(b), the Court will deny that motion. Federal Rule of Civil Procedure 60(b) governs the
28 reconsideration of final orders of the district court. Rule 60(b) permits a district court to relieve a

1 party from a final order or judgment on grounds of: “(1) mistake, inadvertence, surprise, or excusable
2 neglect; (2) newly discovered evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void;
3 (5) the judgment has been satisfied . . . or (6) any other reason justifying relief from the operation of
4 the judgment.” Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable
5 time, in any event “not more than one year after the judgment, order, or proceeding was entered or
6 taken.” Id.

7 Moreover, when filing a motion for reconsideration, Local Rule 230(j) requires a party to show
8 the “new or different facts or circumstances claimed to exist which did not exist or were not shown
9 upon such prior motion, or what other grounds exist for the motion.” Motions to reconsider are
10 committed to the discretion of the trial court. Combs v. Nick Garin Trucking, 825 F.2d 437, 441
11 (D.C.Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc). To succeed, a party
12 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
13 decision. See, e.g., Kern-Tulare Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal.
14 1986), *aff’d in part and rev’d in part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

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

23 Indeed, many of the contentions Petitioner raises in the instant motion are either similar to or
24 identical to the issues raised in the original petition and in his objections to the Magistrate Judge’s
25 Findings and Recommendations. In the order adopting the Findings and Recommendations, the Court
26 expressly considered those points and rejected them. (Doc. 8). Moreover, Petitioner does not allege
27 or establish that the contentions contained in the instant motion constitute “newly discovered
28 evidence” under Rule 60(b) that would entitle him to reconsideration or relief from judgment.

1 In sum, Petitioner has provided no evidence or circumstances that would satisfy any of the
2 requirements of Rule 60(b), and therefore his motion for reconsideration must be denied.

3 **ORDER**

4 Accordingly, it is HEREBY ORDERED that Petitioner's motion for writ of quo warranto
5 (Doc. 10), is DENIED.

6 IT IS SO ORDERED.

7 Dated: **February 25, 2015**

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

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