

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
EASTERN DISTRICT OF CALIFORNIA

DENNIS CHAN LAI,

Petitioner,

v.

PAUL COPENHAVER, Warden,

Respondent.

Case No. 1:14-cv-01775-LJO-EPG-HC

ORDER DENYING MOTION FOR
RECONSIDERATION

(ECF No. 29)

Petitioner is a federal prisoner who had filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On October 21, 2015, the Court adopted the Magistrate Judge’s findings and recommendation, granted Respondent’s motion to dismiss, dismissed the petition as it did not allege cognizable grounds for a petition pursuant to 28 U.S.C. § 2241, and declined to issue a certificate of appealability because it was a successive § 2255 petition disguised as a § 2241 petition.

A petitioner may file a motion for reconsideration of a final judgment, and the motion may be treated as a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e) or as a motion for relief from judgment or an order under Federal Rule of Civil Procedure 60(b). Rule 59(e) provides that “[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.” Petitioner filed his motion for reconsideration on

1 November 16, 2015, which is within 28 days of the entry of judgment, so the Court considers
2 Petitioner's motion under Rule 59(e). Respondent did not file a response to Petitioner's motion
3 for reconsideration.

4 Petitioner's arguments do not merit reconsideration of the dismissal. As stated in the
5 order to adopt, the petition actually challenges Petitioner's sentence and conviction, and not the
6 execution of the sentence. Petitioner does not qualify for the savings clause, and therefore, the
7 petition is actually a § 2255 petition. Petitioner has not presented any arguments to warrant
8 reconsideration of the Court's October 21, 2015 order. Therefore, the motion must be denied.

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

10
11 IT IS SO ORDERED.

12 Dated: January 8, 2016 /s/ Lawrence J. O'Neil
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28