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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALVIN BERNARD JONES,

Petitioner,

v.

J. GASTELO,

Respondent.

Case No. 1:18-cv-00493-JDP

ORDER DISMISSING PETITIONER'S
MOTION FOR EXTENSION OF TIME AS
MOOT

ECF No. 22

ORDER DENYING PETITIONER'S MOTION
FOR RECONSIDERATION

ECF No. 23

Petitioner Alvin Bernard Jones, a state prisoner without counsel, filed a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. Both parties consented to the jurisdiction of a magistrate judge. ECF No. 6, 13. On June 5, 2019, the petition was denied on the merits and the case was closed. ECF No. 20, 21. On June 19, 2019, petitioner moved for a 60-day extension of time to file objections to this court's denial of his petition. ECF No. 22. On July 12, 2019, petitioner filed objections to this court's denial of his petition and requested an evidentiary hearing. ECF No. 23. Because petitioner filed objections less than a month after he requested an extension of time to file objections, I dismiss petitioner's motion for extension of time as moot. I construe petitioner's objections as a motion for reconsideration and deny that motion on the merits.

Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the

1 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment
2 on the following grounds: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
3 discovered evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the
4 judgment has been satisfied . . . or (6) any other reason justifying relief from the operation of the
5 judgment.” Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable
6 time. *Id.* Moreover, when filing a motion for reconsideration, Local Rule 230(j) requires a party
7 to show the “new or different facts or circumstances claimed to exist which did not exist or were
8 not shown upon such prior motion, or what other grounds exist for the motion. To succeed on a
9 motion for reconsideration, a party must set forth facts or law of a strongly convincing nature to
10 induce the court to reverse its prior decision. *See, e.g., Kern-Tulare Water Dist. v. City of*
11 *Bakersfield*, 634 F.Supp. 656, 665 (E.D.Cal. 1986), *aff’d in part and rev’d in part on other*
12 *grounds*, 828 F.2d 514 (9th Cir. 1987).

13 In support of his motion for reconsideration, petitioner has submitted an exact photocopy
14 of the brief he submitted in support of his traverse. ECF No. 19. This brief appears to be
15 petitioner’s appellate brief filed in the California Court of Appeal. This brief presents the same
16 four arguments made in his habeas petition, ECF No. 1, which were the same four arguments
17 denied on the merits by this court, ECF No. 20. Petitioner has not presented any of the arguments
18 required for a motion for reconsideration, such as mistake, inadvertence, surprise, excusable
19 neglect, newly discovered evidence or fraud. Petitioner has not claimed that the judgment is void
20 or has been satisfied. Petitioner has not presented any other reason to justify relief under Rule
21 60(b). Therefore, the motion for reconsideration is denied.

22 Petitioner requested an evidentiary hearing as part of his motion for reconsideration. A
23 state prisoner seeking an evidentiary hearing must show that he “was not at fault in failing to
24 develop that evidence in state court, or (if he was at fault) if the conditions prescribed by
25 § 2254(e)(2) were met.” *Holland v. Jackson*, 542 U.S. 649, 652-53 (2004). Under Section
26 2254(e)(2), the petitioner must show either a new, retroactive rule of constitutional law that was
27 unavailable to him or a fact that he could not have discovered through the exercise of due
28 diligence. 28 U.S.C. § 2254(e)(2)(A)(ii). When the petitioner fails to carry this burden, the court

1 may not hold an evidentiary hearing. *Id.* § 2254(e)(2). Petitioner made no arguments in support
2 of his motion for an evidentiary hearing. Therefore, his motion is denied.

3 **Order**

4 1. Petitioner's motion for extension of time is dismissed as moot. ECF No. 22.

5 2. Petitioner's motion for reconsideration and evidentiary hearing is denied. ECF No. 23.

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7 IT IS SO ORDERED.

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9 Dated: December 24, 2019


UNITED STATES MAGISTRATE JUDGE

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12 No. 206.

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