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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROY RUSS,
Petitioner,
v.
BRANDON PRICE,
Respondent.

No. 18-cv-1154-AWI-JDP (HC)
FINDINGS AND RECOMMENDATIONS
THAT COURT GRANT PETITIONER
RELIEF FROM JUDGMENT AND VACATE
ORDER DISMISSING CASE
ECF Nos. 7, 9, 10
OBJECTIONS DUE IN 14 DAYS

Petitioner Roy Russ, a civil detainee confined at Coalinga State Hospital, sought a writ of habeas corpus under 28 U.S.C. § 2241. We recommended that the court dismiss the petition at screening without prejudice, *see* ECF No. 7 at 2, and the court summarily adopted our recommendation and entered judgment against petitioner, ECF Nos. 9, 10. Petitioner has not appealed. We nonetheless recommend that the court grant petitioner relief from judgment and vacate the order dismissing the petition. If the court adopts these recommendations, we will screen the petition again.

A federal district court may apply Rule 60 of the Federal Rules of Civil Procedure in habeas proceedings. *See Ybarra v. Filson*, 869 F.3d 1016, 1022 (9th Cir. 2017). Under Rule 60(b), the court may grant relief from judgment. *See Fid. Fed. Bank, FSB v. Durga Ma Corp.*, 387 F.3d 1021, 1024 (9th Cir. 2004); *San Luis & Delta-Mendota Water Auth. v. U.S. Dep't of Interior*, 624 F. Supp. 2d 1197, 1208 (E.D. Cal. 2009), *aff'd sub nom. San Luis & Delta-Mendota*

1 *Water Auth. v. United States*, 672 F.3d 676 (9th Cir. 2012). We believe that is the appropriate
2 course of action here.

3 Petitioner’s original filing ran 237 pages in length. At the outset of his petition, Russ
4 presented his claim that state courts erroneously dismissed his state habeas petition based on
5 clerical errors such as incorrect case numbers. *See* ECF No. 1 at 2-5. Petitioner’s lead arguments
6 did not raise issues of federal law, and we recommended dismissal on the ground that he raised no
7 federal claims. We have, however, re-reviewed the petition, and have identified certain federal
8 claims within it. Specifically, between pages 62 and 73, petitioner raised two federal due process
9 claims. *See* ECF No. 1 at 62-73. Although this court may ultimately dismiss those claims after a
10 second round of screening, petitioner is entitled to have his federal claims considered by the
11 court.

12 **Findings and Recommendations**

13 We recommend that the court grant petitioner relief from the judgment dated August 1,
14 2019, ECF No. 10. We also recommend that the court vacate the order dated August 1, 2019,
15 ECF No. 9, and the judgment dated August 1, 2019, ECF No. 10.

16 These findings and recommendations are submitted to the U.S. District Court Judge
17 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
18 Practice for the United States District Court, Eastern District of California. Within 14 days of the
19 service of the findings and recommendations, any party may file written objections to the findings
20 and recommendations with the court and serve a copy on all parties. That document must be
21 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The District
22 Judge will then review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

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IT IS SO ORDERED.

Dated: August 6, 2019


UNITED STATES MAGISTRATE JUDGE

No. 202