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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 BYRON EUGENE JOHNSON,
12 Petitioner,
13 v.
14 D.L. RUNNELS, et al.,
15 Respondent.

No. 2:04-cv-0253 LKK KJN P

ORDER AND FINDINGS AND RECOMMENDATIONS

17 Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas
18 corpus pursuant to 28 U.S.C. § 2254. On January 14, 2015, petitioner filed a motion for a relief
19 from judgment pursuant to Federal Rule of Civil Procedure 60. (ECF No. 80). In this motion,
20 petitioner alleges that this court failed to process his appeal from the judgment entered on March
21 28, 2011. For the reasons stated herein, the undersigned recommends that petitioner's motion be
22 denied.

Court records indicate that on December 14, 2010, the undersigned recommended that petitioner's application for a petition for writ of habeas corpus be denied. (ECF No. 63.) On March 2, 2011, petitioner filed an appeal to the Ninth Circuit Court of Appeals from the findings and recommendations. (ECF No. 67.) On March 31, 2011, the Clerk of the Court processed this appeal to the Ninth Circuit. (ECF No. 72.)

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On March 28, 2011, the Honorable Lawrence K. Karlton adopted the findings and recommendations and judgment was entered. (ECF Nos. 69, 70.) On April 6, 2011, petitioner filed his notice of appeal from the judgment. (ECF No. 76.) The Clerk of the Court for this court processed the appeal from the judgment to the Ninth Circuit. (ECF No. 77.)

Because the court docket reflects that the Clerk of the Court processed petitioner's appeal from the judgment, petitioner's motion for relief from judgment should be denied.¹

Accordingly, IT IS HEREBY ORDERED that, based on the retirement of the Honorable Lawrence K. Karlton, the Clerk of the Court is directed to reassign this action to a new district judge;

IT IS HEREBY RECOMMENDED that petitioner's motion for relief from judgment (ECF No. 80) be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be filed and served within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 22, 2015

Kendall J. Newman
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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¹ On May 10, 2011, the Ninth Circuit dismissed petitioner's appeal from the findings and recommendations for lack of jurisdiction. (ECF No. 75.) While this court's docket contains no record regarding the Ninth Circuit's resolution of petitioner's appeal from the judgment, this court recently contacted the Ninth Circuit regarding the appeal from the judgment. All future inquiries by petitioner regarding this appeal should be made to the Ninth Circuit.