

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUFUS HARTY KELSAW, IV,

No. 2:08-cv-01612-MCE-CHS P

Petitioner,

vs.

ORDER

BOB HOREL,

Respondent.

_____ /

Kelsaw’s pro se petition for writ of habeas corpus was denied and judgment entered on November 20, 2010. Kelsaw filed a timely notice of appeal of the decision. On January 13, 2011, his appeal was processed to the United States Court of Appeals for the Ninth Circuit. Subsequently, on December 2, 2011, he filed a Motion for Relief from Judgment under Federal Rule of Civil Procedure 60(b)(1) and (b)(3) alleging “Mistake, Inadvertence, Fraud, and Misrepresentation.” Respondent’s opposition to the motion is also before the Court.

///
///
///
///


1 Kelsaw's motion for relief from judgment is untimely. A motion under Rule 60(b)(1) or
2 (b)(3) must be filed within a reasonable time and in no event more than a year after entry of
3 judgment. See Fed. R. Civ. P. 60(c)(1); Gonzalez v. Crosby, 545 U.S. 524, 535 (2005). Here,
4 Kelsaw's motion was filed just over a year after entry of judgment and he offers no explanation
5 to justify the unreasonable delay.

6 Moreover, the motion is substantively without merit. Kelsaw fails to allege any particular
7 "mistake, inadvertence, surprise, or excusable neglect" under Fed. R. Civ. P. 60(b)(1) or any
8 specific "fraud" under subsection (b)(3). Kelsaw merely asserts that the Court has jurisdiction to
9 reconsider its previous ruling and summarily asks the Court to do so by citing the text of Rule
10 60(b)(1) and (b)(3). His "naked, conclusory allegation, without a statement of underlying facts
11 which tends to support such an allegation," is "insufficient" to satisfy his burden as the moving
12 party to prove the existence of a justification for Rule 60(b) relief. See Cassidy v. Tenorio, 856
13 F.2d 1412, 1415-16 (9th Cir. 1988).

14 For the foregoing reasons, Kelsaw's December 2, 2011 motion for relief from judgment is
15 hereby DENIED.

16 IT IS SO ORDERED.

17 Dated: February 8, 2012

18 
19 _____
20 MORRISON C. ENGLAND, JR.
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26