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

JOHN NGUYEN,

No. 2:12-CV-0493-KJM-CMK-P

Petitioner,

vs.

ORDER

RICK HILL,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brought a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by the Eastern District of California local rules. On January 25, 2013, the Magistrate Judge filed findings and recommendations, recommending that the petition be dismissed, which the court adopted in full on March 29, 2013.

On April 11, 2013, petitioner moved for relief from judgment under Federal Rule of Civil Procedure 60(b) and also filed a request for an extension of time to request a certificate of appealability. Respondent filed a statement of non-opposition to petitioner’s Rule 60(b) motion on April 23, 2013.

Rule 60(b) provides: “On motion and just terms, the court may relieve a party . . . from a final judgment . . . for . . . (1) mistake, inadvertence, surprise, or excusable neglect;

1 (2) newly discovered evidence . . .; (3) fraud . . . misrepresentation, or misconduct . . .; (4) the
2 judgment is void; (5) the judgment has been satisfied, released or discharged . . .; or (6) any other
3 reason that justified relief.” A Rule 60(b) motion “must be made within a reasonable time.”
4 FED. R. CIV. P. 60(c)(1).

5 The grounds for petitioner’s motion are that he was never served with the
6 Magistrate Judge’s findings and recommendations and was never able to file objections. The
7 court finds that these circumstances merit granting relief from judgment. Moreover, petitioner
8 timely filed his motion less than two weeks after judgment was entered.

9 Accordingly, the court orders as follows:

- 10 1. The court’s March 29, 2013 order is vacated.
- 11 2. The clerk is directed to serve petitioner with a copy of the Magistrate Judge’s
12 findings and recommendations.
- 13 3. Petitioner may file written objections with the Magistrate Judge within 14 days of
14 being served with the findings and recommendations.
- 15 4. Petitioner’s request for an extension of time to request a certificate of
16 appealability is denied as moot.

17 IT IS SO ORDERED.

18 DATED: May 1, 2013.

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UNITED STATES DISTRICT JUDGE