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

DANIEL K. CHESTANG,

Petitioner,

No. 2:12-cv-0737 GGH P

vs.

SWARTHOUT,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This case is before the undersigned pursuant to petitioner’s consent. Doc. 4. On April 23, 2012, the court screened the petition and dismissed it with one opportunity to amend in 28 days. Petitioner did not file an amended petition so the case was dismissed and closed on July 3, 2012, for failure to follow court instructions. On August 28, 2012, petitioner filed a motion for reconsideration that the court construes as a motion pursuant to Fed. R. Civ. P. 60(b), for relief from final judgment.

Under Rule 60(b), a party may seek relief from judgment and to re-open his case in limited circumstances, “including fraud, mistake, and newly discovered evidence.” Gonzalez v. Crosby, 545 U.S. 524, 528, 125 S.Ct. 2641 (2005). A purported Rule 60(b) motion seeking to reopen the judgment of an initial habeas petition brought pursuant to 28 U.S.C. § § 2254, 2255 is

1 in essence a successive petition, under 28 U.S.C. § 2244(b) where it “seeks to add a new ground
2 for relief,” or “if it attacks the federal court's previous resolution of a claim on the merits ...”
3 Gonzalez, at 532. “[A] ‘claim’ as used in § 2244(b) is an asserted federal basis for relief from a
4 state court's judgment of conviction.” Id., at 530.

5 Petitioner states that he never received the court’s screening order that allowed
6 him to file an amended petition and only became aware of it when he received the July 3, 2012,
7 order dismissing the case. Petitioner seeks to now be allowed to file an amended petition. As
8 petitioner is not seeking to add a new ground for relief, rather just file an amended petition as the
9 court first provided, the motion will be granted as this is not a successive petition. Petitioner
10 shall file an amended petition within 21 days.

11 Accordingly, IT IS HEREBY ORDERED that

12 1. Petitioner’s motions for relief from judgment pursuant to Rule 60(b) (Docs. 8,
13 9) are granted and the case shall be reopened;

14 2. Petitioner shall file an amended petition within 21 days.

15 DATED: September 26, 2012

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17 /s/ Gregory G. Hollows
 UNITED STATES MAGISTRATE JUDGE

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19 GGH: AB
ches0737.60b

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