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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT JOHN STOCKTON, JR.,  
Petitioner,  
v.  
GREG LEWIS, Warden,  
Respondent.

No. 2:13-cv-02413-KJM-KJN

ORDER

On March 30, 2015, the court issued an order adopting the magistrate judge’s findings and recommendations in full, granting respondent’s motion to dismiss, and denying the motion for a certificate of appealability. Order Mar. 30, 2015, ECF No. 22; Findings & Recommendations, ECF No. 18. The court entered judgment on the same day. ECF No. 23. On April 10, 2015, petitioner Robert John Stockton, Jr. filed a motion for reconsideration, ECF No. 24,<sup>1</sup> a motion for a certificate of appealability, ECF No. 26, a motion to appoint counsel, ECF No. 27, and a notice of appeal, ECF No. 25. Respondents opposed the motion for reconsideration on May 5, 2015. ECF No. 32.

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<sup>1</sup> Stockton’s motion actually seeks leave to file a motion for reconsideration and attaches a proposed motion. Federal Rule of Civil Procedure 59(e) allows a litigant to file “[a] motion to alter or amend a judgment . . . no later than 28 days after the entry of the judgment.” The court therefore grants Stockton’s request for leave to file a motion for reconsideration.

1 I. RECONSIDERATION

2 This court retains jurisdiction to consider this motion. *See* Fed. R. App. P.  
3 4(a)(4)(B)(i). Because the court denied Stockton’s previous application for a certificate of  
4 appealability, it construes his motion here as a request for reconsideration of its order not to issue  
5 that certificate. *See* App. Cert. Appealability, ECF No. 20; Order Mar. 30, 2015, at 2 (denying  
6 application). Furthermore, because Stockton’s motion was filed within twenty-eight days of the  
7 court’s order and entry of judgment, the court construes it as one brought under Federal Rule of  
8 Civil Procedure 59(e). *See Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892,  
9 898–99 (9th Cir. 2001).

10 In general, a motion to reconsider founded on Rule 59(e) may be granted (1) to  
11 correct “manifest errors of law or fact,” (2) to present new, previously unavailable evidence,  
12 (3) to prevent manifest injustice, or (4) to account for “an intervening change in controlling law.”  
13 *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir.2011). Here, Stockton essentially  
14 argues for reconsideration to correct errors of law or fact and prevent manifest injustice, but his  
15 motion relies on arguments and facts he presented in opposition to the motion to dismiss, matters  
16 the magistrate judge and the undersigned reviewed before issuing previous orders: Stockton  
17 primarily disputes the state courts’ “one-sided evidentiary analysis,” *e.g.*, Mot. Recons. 3, and  
18 argues the court disregarded his arguments of actual innocence, *id.* at 5–6, and prosecutorial  
19 misconduct, *id.* at 6–7. The court took each of these arguments into consideration before issuing  
20 its previous order. Neither has Stockton described any manifest injustice. The motion is  
21 therefore denied.

22 II. MOTION TO APPOINT COUNSEL

23 Stockton requests the court appoint counsel, requesting relief both from this court  
24 and from the Ninth Circuit Court of Appeals. Mot. Appoint Counsel 1, ECF No. 27. Because  
25 Stockton has filed a notice of appeal, the court denies his motion to appoint counsel without  
26 prejudice. *See Goff v. Salinas*, No. 11-3410, 2013 WL 1309457, at \*1 (E.D. Cal. Apr. 1, 2013)  
27 (denying motion to appoint counsel in similar circumstances) (citing Fed. R. Civ. P. 62.1 and  
28 *Pope v. Savings Bank of Puget Sound*, 850 F.2d 1345, 1346 (9th Cir. 1988)).

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III. CONCLUSION

Petitioner's motion for reconsideration and for a certificate of appealability is DENIED. The motion for appointment of counsel is DENIED without prejudice.

IT IS SO ORDERED.

DATED: May 22, 2015.



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UNITED STATES DISTRICT JUDGE