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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID DANIEL CEPEDA,
Petitioner,
v.
ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA,
Respondent.

No. 2:14-cv-2080 AC P

ORDER

Petitioner is a former state prisoner proceeding without counsel. On September 8, 2014, he filed a petition for writ of coram nobis pursuant to 28 U.S.C. § 1651. ECF No. 1. Petitioner consented to magistrate judge jurisdiction (ECF No. 3) and, on April 30, 2015, the court entered an order dismissing the petition without prejudice to refiling in state court. ECF No. 5. On January 3, 2017, petitioner filed a motion for reconsideration of that dismissal. ECF No. 7. The court will deny the motion for reconsideration as untimely.

A motion for reconsideration is construed as a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) when filed within the time limit set by that rule. United States v. Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992). A motion to alter or amend judgment must be filed no later than twenty-eight days after judgment is entered. Fed. R. Civ. P. 59(e). Judgment in this case was entered on April 30, 2015 (ECF No. 6) and, as such, petitioner is well

1 past the twenty-eight day limit. Accordingly, the court will instead construe the instant motion as
2 a motion for reconsideration pursuant to Fed. R. Civ. P. 60(b).

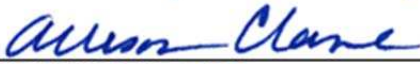
3 The motion is also untimely under Fed. R. Civ. P. 60(b), however. The Federal Rules of
4 Civil Procedure provide that “[a] motion under Rule 60(b) must be made within a reasonable time
5 . . . no more than a year after the entry of the judgment or order or the date of the proceeding.”
6 Fed. R. Civ. P. 60(c)(1). The motion exceeds that deadline.

7 The court would not grant petitioner’s motion even if it were timely. The court previously
8 dismissed the petition after finding that coram nobis was not available to attack a state court
9 conviction. ECF No. 5 at 2. Petitioner has failed to offer any legal argument which causes the
10 court to question the validity of its previous finding.

11 Accordingly, IT IS HEREBY ORDERED that:

12 Petitioner’s motion for reconsideration (ECF No. 7) is denied.

13 DATED: May 10, 2017

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15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE
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