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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT GUY BAKER,
Petitioner,
v.
DAVE DAVEY,
Respondent.

No. 2:15-cv-793-EFB P

ORDER

Petitioner, a state prisoner proceeding without counsel, sought a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ His petition was dismissed as second or successive and judgment was duly entered. ECF Nos. 5, 6. He now moves to vacate the judgment. ECF No. 7.

Reconsideration is appropriate if the court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Additionally, Rule 60(b) of the Federal Rules of Civil Procedure provides as follows:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that,

¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to petitioner’s consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 with reasonable diligence, could not have been discovered in time to move for a
2 new trial under rule 59(b); (3) fraud (whether previously called intrinsic or
3 extrinsic), misrepresentation, or misconduct by an opposing party; (4) the
4 judgment is void; (5) the judgment has been satisfied, released or discharged; it is
5 based on an earlier judgment that has been reversed or vacated; or applying it
6 prospectively is no longer equitable; or (6) any other reason that justifies relief.

7 Petitioner argues that if he amends his petition to delete ground three of the original
8 petition, his petition will no longer be second or successive. The argument lacks merit. Claims
9 one and two of the proposed amended petition still challenge the same judgment of conviction
10 that petitioner challenged in an earlier action. Since petitioner continues to challenge the same
11 judgment that he previously challenged in this court, and which was adjudicated on the merits, the
12 petition remains second or successive. Thus, petitioner has not shown that circumstances exist to
13 justify the requested relief.

14 Accordingly, IT IS HEREBY ORDERED that petitioner's motion to vacate the judgment
15 (ECF No. 7) is denied. Petitioner is hereby reminded that the court will not respond to future
16 filings in this action that are not authorized by the Federal Rules of Civil Procedure or the Federal
17 Rules of Appellate Procedure.

18 DATED: June 29, 2015.

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20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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