

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PHILLIP LYNN CAPPS,
Petitioner,
v.
R. NDOH, Warden,
Respondent.

No. 2:16-cv-0981-EFB P

ORDER

Petitioner is a state prisoner without counsel seeking 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. 7 & 8. He now moves to “open” this case, which the court construes as a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

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:

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Here, petitioner has not shown that any circumstances exist to justify the requested relief.

Accordingly, IT IS HEREBY ORDERED that petitioner’s motion to “open” this case, construed as a motion for relief from judgment pursuant to Rule 60(b) (ECF No. 14), is denied.

Petitioner is hereby reminded that the court will not respond to future filings in this action that are not authorized by the Federal Rules of Civil Procedure or the Federal Rules of Appellate Procedure.

DATED: March 30, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE