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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA CONLAN,  
Petitioner,  
v.  
QUAY,  
Respondent.

No. 2:17-cv-01466-KJM-EFB

ORDER

Petitioner, proceeding pro se, petitioned for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1 (June 9, 2017). On March 14, 2018, the magistrate judge recommended dismissing the matter for lack of jurisdiction, explaining petitioner’s challenge to his conviction should have been brought as a 28 U.S.C. § 2255 petition in the Texas sentencing court rather than as a § 2241 petition in this court. *See* Findings and Recommendations (“F&R”), ECF No. 10, at 8 (“Because petitioner has not shown that a motion under § 2255 is inadequate or ineffective to present his claims, this court lacks jurisdiction to consider this petition under 28 U.S.C. § 2241.”). On March 30, 2018, this court adopted the findings and recommendations and dismissed the petition for lack of jurisdiction. Dismissal Order, ECF No. 13, at 1-2.

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1           Petitioner now moves to reconsider that dismissal order under Federal Rule of  
2 Civil Procedure 59(e). Mot., ECF No. 16 (April 30, 2018). Because petitioner filed his motion  
3 on April 30, 2018, more than 28 days after the order he asks the court to consider, it is properly  
4 construed as a Rule 60(b) motion. *See Am. Ironworks & Erectors, Inc. v. N. Am. Constr.*  
5 *Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001) (explaining motions to reconsider filed after timeline  
6 under Rule 59(e) are automatically construed as Rule 60(b) motions). Rule 60(b) permits a court  
7 to relieve a party from a final judgment for several reasons, including mistake, inadvertence,  
8 surprise, excusable neglect, newly discovered evidence, fraud, voidness, satisfaction, or “any  
9 other reason that justifies relief.” Fed. R. Civ. P. 60(b)(1)-(6). Whether to grant Rule 60(b) relief  
10 is a matter of discretion. *Lemoge v. United States*, 587 F.3d 1188, 1191-92 (9th Cir. 2009).

11           Here, petitioner argues reconsideration is warranted because the dismissal was  
12 decided before the court could consider newly discovered evidence. Mot. at 4-6. Specifically, he  
13 argues that just eight days before the dismissal order issued, he had filed a motion to amend his  
14 petition to add new evidence that would “undermine[] all proof of guilt” and trigger the “escape  
15 hatch” exception, which in turn would give this court jurisdiction over his habeas petition. *Id*; *see*  
16 *also* Mot. to Amend, ECF No. 12 (Mar. 22, 2018); Dismissal Order at 2 n.2 (denying motion to  
17 amend “[b]ecause the court lacks jurisdiction over this action for the reasons stated in the findings  
18 and recommendations”).

19           Plaintiff has not met his burden to justify reconsideration. “The overwhelming  
20 weight of authority is that the failure to file documents in an original motion or opposition does  
21 not turn the late filed documents into ‘newly discovered evidence.’” *Sch. Dist. No. 1J,*  
22 *Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (citation and quotations  
23 omitted) (listing cases). Moreover, petitioner has neither described the alleged new evidence nor  
24 explained when he obtained it. *See generally* Mot. He also has not explained how his new  
25 evidence shows, by a preponderance of the evidence, that no reasonable juror would have  
26 convicted him, as is necessary to trigger the Rule 60(b) escape hatch. *See Redfield v. United*  
27 *States*, 315 F.2d 76, 83 (9th Cir. 1963). The court does not obtain jurisdiction over a § 2241  
28 application merely because petitioner argues, without detail, that there is “new evidence”

1 undermining his guilt. *See* Mot. at 4. It appears, as the magistrate judge suggests, that the proper  
2 basis for this argument would be a § 2255(h)(1) petition in the sentencing court. *See* F&R at 7  
3 (explaining § 2255(h) is the proper procedure to challenge convictions based on new evidence).

4 Because petitioner has cited no valid basis to reconsider this court's dismissal for  
5 lack of jurisdiction, his motion for reconsideration is DENIED.

6 IT IS SO ORDERED.

7 This resolves ECF No. 16.

8 DATED: August 3, 2018.

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11 UNITED STATES DISTRICT JUDGE  
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