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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CALVIN T. KUTZER,  
Petitioner,  
v.  
ROSANNE CAMPBELL, Warden,  
Respondent.

No. C 05-3212 MMC (PR)  
**ORDER DENYING MOTION FOR RECONSIDERATION**  
(Docket No. 40)

On August 8, 2005, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 10, 2008, the Court denied the petition, and judgment was entered on the same day. Presently before the Court is petitioner’s August 13, 2008 motion for reconsideration of the order of dismissal.

Where, as here, the court’s ruling has resulted in a final judgment or order, a motion for reconsideration may be based either on Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. Rule 59(e) is inapplicable to petitioner’s request, because the request was submitted after the time for filing such a motion had passed. See Fed. R. Civ. P. 59(e) (providing motion must be filed no more than ten days following entry of judgment).

Rule 60(b), which does not contain an express deadline for filing, provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that by due diligence could not

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1 have been discovered before the court's decision; (3) fraud by the adverse party; (4) voiding  
2 of the judgment; (5) satisfaction of the judgment; (6) any other reason justifying relief. See  
3 Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir.1993).  
4 Although couched in broad terms, subparagraph (6) requires a showing that the grounds  
5 justifying relief are extraordinary. See Twentieth Century - Fox Film Corp. v. Dunnahoo,  
6 637 F.2d 1338, 1341 (9th Cir. 1981).

7 Here, petitioner's request contains no allegation as to newly-discovered evidence, nor  
8 does it set forth any mistake, inadvertence, surprise, excusable neglect, fraud by the adverse  
9 party, or voiding of the judgment; petitioner offers no other reason justifying relief.  
10 Accordingly, the motion for reconsideration is hereby DENIED.

11 This order terminates Docket No. 40.

12 IT IS SO ORDERED.

13 DATED: February 13, 2009

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15 MAXINE M. CHESNEY  
16 United States District Judge  
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