

1 20, 2011 pending motion for reconsideration." (Docket no. 105 at
2 1.)

3 Where the district court's ruling has resulted in a final
4 judgment or order, a motion for reconsideration may be based on
5 Rule 60(b) of the Federal Rules of Civil Procedure. See Am.
6 Ironworks & Erectors v. N. Am. Constr. Corp., 248 F.3d 892, 898-99
7 (9th Cir. 2001). Rule 60(b) provides for reconsideration where one
8 or more of the following is shown: (1) mistake, inadvertence,
9 surprise or excusable neglect; (2) newly discovered evidence which
10 by due diligence could not have been discovered before the court's
11 decision; (3) fraud by the adverse party; (4) the judgment is void;
12 (5) the judgment has been satisfied; (6) any other reason
13 justifying relief. Fed. R. Civ. P. 60(b); School Dist. 1J v.
14 ACandS Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

15 Motions for reconsideration should not be frequently made or
16 freely granted; they are not a substitute for appeal or a means of
17 attacking some perceived error of the court. See Twentieth
18 Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir.
19 1981). "[T]he major grounds that justify reconsideration involve
20 an intervening change of controlling law, the availability of new
21 evidence, or the need to correct a clear error or prevent manifest
22 injustice.'" Pyramid Lake Paiute Tribe of Indians v. Hodel, 882
23 F.2d 364, 369 n.5 (9th Cir. 1989) (quoting United States v. Desert
24 Gold Mining Co., 433 F.2d 713, 715 (9th Cir. 1970)).

25 In the present motion, Plaintiff argues reconsideration should
26 be granted and the judgment of dismissal vacated because the Court
27 wrongly interpreted the evidence presented by the parties in
28 support of and in opposition to the motion to dismiss.

1 In particular, Plaintiff maintains the Court wrongly decided
2 the motion because the evidence shows that SVSP prison officials
3 deliberately prevented him from exhausting administrative remedies
4 by (1) stealing the first level response to his appeal,
5 (2) modifying the "received" date on his appeal, (3) screening out
6 the appeal as untimely filed, and (4) waiting more than one month
7 to return to Plaintiff the appeal and screening form. Also,
8 Plaintiff maintains that the Court wrongly determined that he did
9 not attempt to challenge the accuracy of the screening decision
10 because the evidence shows that, after his rejected appeal was
11 returned to him, he submitted another appeal claiming that the
12 denial of the first appeal as untimely was due to bias.

13 Plaintiff's arguments concerning the deliberate actions of
14 SVSP prison officials to prevent him from exhausting administrative
15 remedies were raised in Plaintiff's opposition to the motion to
16 dismiss and discussed by the Court in the Order granting that
17 motion. Although Plaintiff disagrees with the Court's ruling, he
18 has presented no evidence or legal argument that warrants
19 reconsideration. Further, Plaintiff's contention that the Court
20 wrongly determined that he did not attempt to challenge the appeal
21 decision is without merit. Rather, the Court found that Plaintiff
22 had not followed the explicit instructions provided on the screening
23 form for challenging the screening decision. Specifically, the
24 Court found as follows:

25 As Appeals Coordinator Medina explained, inmate
26 appeals that are "screened out" are returned to the
27 inmate with instructions on how to correct the
28 deficiency. (Medina Decl. ¶ 13.) The screening form
attached to log no. SVSP C-06-02436 and returned to
Plaintiff indicated, "If you allege the above reason is
inaccurate, then attach an explanation on a separate

1 piece of paper, or use the back of this screen-out."
2 (Medina Decl., Ex. I.) "Please return this form to the
3 Appeals Coordinator with the necessary information
4 attached." (Id.)

5 Plaintiff does not allege, nor does the record
6 indicate, that he returned the form to the Appeals
7 Coordinator with an explanation alleging the screening-
8 out decision for untimeliness was inaccurate. Neither
9 does Plaintiff allege that he did not have "the
10 opportunity to file within the prescribed time
11 constraints." [Citation omitted.] To the contrary,
12 Plaintiff claims that once he learned Defendant Bailey
13 passed around a falsified 128G chrono to other prisoners,
14 he "confronted" Defendant Bailey himself. (Am. Compl. at
15 4.)

16 Docket no. 98 at 11:26-12:15.

17 Plaintiff did not argue in his opposition, nor does he here,
18 that he followed the procedures on the screening form.

19 Accordingly, for the reasons discussed above, Plaintiff's
20 motion for reconsideration is DENIED.

21 With the denial of the motion for reconsideration the notice
22 of appeal becomes effective. See Fed. R. App. P. 4(B)(i).

23 Rule 24(a)(3) of the Federal Rules of Appellate Procedure
24 provides that a party granted leave to proceed in forma pauperis
25 (IFP) in district court, as Plaintiff was here, may continue in
26 that status on appeal unless the district court certifies that the
27 appeal is not taken in good faith, which in this context means that
28 it is frivolous. See Ellis v. United States, 356 U.S. 674, 674-75
(1958). The appeal is taken in good faith; therefore, Plaintiff
may continue his IFP status on appeal.

Pursuant to the Ninth Circuit's October 11, 2011 Order,
Plaintiff "shall file an amended notice of appeal" within thirty
(30) days of the date of this Order. (Docket no. 105 at 1.)

The Clerk of the Court shall notify Plaintiff and the Ninth

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Circuit of this Order. See Fed. R. App. P. 24(a)(4).

This Order terminates Docket nos. 101 and 102.

IT IS SO ORDERED.

Dated: 10/17/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 MALIK JONES,
5 Plaintiff,

Case Number: CV07-04277 CW

CERTIFICATE OF SERVICE

6 v.

7 MIKE EVANS, WARDEN et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on October 17, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Malik Jones K-09065
16 FC-O-3-116
17 P.O. Box 1050
18 Soledad, CA 93960

19 Dated: October 17, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
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United States District Court
For the Northern District of California