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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

BILL BUNN,

Petitioner,

No. C 09-0251 PJH (PR)

vs.

WARDEN SALINAS VALLEY STATE
PRISON,

**ORDER DENYING
 PETITIONER'S MOTION FOR
 RELIEF FROM JUDGMENT**

Respondent.

This habeas case brought pro se by a state prisoner under 28 U.S.C. § 2254, was closed when the court granted respondent's motion to dismiss the petition as being untimely. Petitioner has now filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b).

Rule 60(b) lists six grounds for relief from a judgment. Such a motion must be made within a "reasonable time," and as to grounds for relief (1) - (3), no later than one year after the judgment was entered. See Fed. R. Civ. P. 60(b). A Rule 60(b) motion does not affect the finality of a judgment or suspend its operation, see *id.*; therefore, a party is not relieved of its obligation to comply with the court's orders simply by filing a Rule 60(b) motion. See *Hook v. Arizona Dep't of Corrections*, 107 F.3d 1397, 1404 (9th Cir. 1997).

Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *School Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). Rule 60(b) provides a mechanism for parties to seek

1 relief from a judgment when "it is no longer equitable that the judgment should have
2 prospective application," or when there is any other reason justifying relief from judgment.
3 *Jeff D. v. Kempthorne*, 365 F.3d 844, 853-54 (9th Cir. 2004) (quoting Fed. R. Civ. P. 60(b)).
4 Rule 60(b) is not intended to remedy the effects of a deliberate and independent litigation
5 decision that a party later comes to regret through second thoughts or subsequently-gained
6 knowledge. *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1099 (9th Cir. 2006)
7 (denying reconsideration to a party who had settled and then discovered that her attorney
8 had made legal errors in advising her to settle).

9 In the opposition to the motion to dismiss, petitioner conceded that his habeas
10 petition was untimely but argued that the petition was timely in light of *Martinez v. Ryan*,
11 566 U.S. —, 132 S. Ct. 1309 (2012), and its ruling on procedural default. This court still
12 analyzed the timeliness issue and granted the motion to dismiss noting that *Martinez v.*
13 *Ryan* was not applicable to this case. In this Rule 60(b) motion, petitioner now argues for
14 the first time that his petition was timely based on statutory tolling while several of his state
15 petitions were pending.

16 Even assuming that petitioner was entitled to tolling for all of his state habeas
17 petitions, the federal petition would still be untimely. As stated in the court's order
18 dismissing the case, the statute of limitations expired on September 19, 2007. Petitioner
19 did not file his first state petition until September 5, 2007, just two weeks prior to the
20 expiration of the statute of limitations. His final state petition was denied by the California
21 Supreme Court on December 17, 2008, and he filed this federal petition on January 14,
22 2009. If petitioner were entitled to tolling for all of his state petitions, he would still need
23 to have filed the federal petition within two weeks from December 17, 2008. However, the
24 federal petition was not filed until nearly a month later so the petition would still be untimely
25 by nearly two weeks.

26 Respondent and this court noted that statutory tolling was unavailable for several of
27 the state petitions as they were not filed in the next higher court and tolling continues only
28 through "one full round" of state habeas petitions. See *Carey v. Saffold*, 536 U.S. 214, 222-

1 23 (2002); *Waldrip v. Hall*, 548 F.3d 729, 734 (9th Cir. 2008); *Biggs v. Duncan*, 339 F.3d
2 1045, 1048 (9th Cir. 2003). Statutory tolling does not apply where a petitioner files a
3 subsequent petition in the same court, unless the subsequent petition constitutes an
4 attempt to correct deficiencies in the previous petition. See *Stancl v. Clay*, 692 F.3d 948,
5 953 (9th Cir. 2012). Petitioner chose not to address respondent's argument in his
6 opposition but now for the first time argues that several of his state petitions were filed in an
7 attempt to correct deficiencies of prior petitions. Other than presenting this conclusory
8 statement, he fails to provide copies of these state petitions in support or provide any more
9 detail. Regardless, as noted above this would still not overcome the time between the
10 denial by the California Supreme Court and the filing of the federal petition, as that period
11 of time is not entitled to tolling as there was no petition pending.

12 **CONCLUSION**

13 Petitioner's motion for relief from judgment (Docket No. 38) is **DENIED**.

14 **IT IS SO ORDERED.**

15 Dated: October 15, 2013.

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17 PHYLLIS J. HAMILTON
18 United States District Judge

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