

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

3
4 MANUEL ZARATE,

No. C 10-4727 CW (PR)

5 Petitioner,

ORDER DENYING
PETITIONER'S MOTION TO
ALTER OR AMEND THE
JUDGMENT

6 v.

7 GREG LEWIS, Acting Warden,

(Docket no. 16)

8 Respondent.
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12 Petitioner, a state prisoner currently incarcerated at
13 Pelican Bay State Prison (PBSP), filed this pro se habeas corpus
14 petition pursuant to 28 U.S.C. § 2254. The Court construed the
15 petition as raising the following claims: (1) Petitioner's First
16 Amendment rights were violated when prison officials confiscated
17 his mail on the false ground that it was gang-related, (2) his
18 Fourteenth Amendment right to due process was violated when prison
19 officials, in response to his inmate appeal challenging the taking
20 of his mail, falsely referred to him as an active gang member, and
21 (3) his rights under the California Informational Practices Act
22 (IPA) were violated by the creation and placement of false
23 information in his prison file.

24 After full briefing by the parties, the Court, by Order dated
25 March 20, 2012, granted Respondent's motion to dismiss the
26 petition and found Petitioner's claims not cognizable because
27 (1) he had failed to show how the confiscation of his mail affects
28 the fact or duration of his custody and, therefore, such claim
must be brought under 42 U.S.C. § 1983 and not in a habeas

1 petition, (2) his allegations that the documents referring to his
2 gang membership may result in a delay or denial of parole involve
3 discretionary decisions too speculative to state a claim for
4 habeas corpus relief and he has no liberty interest in the precise
5 accuracy of his prison files under § 1983, and (3) his allegations
6 of violations of the IPA concern matters of state law that do not
7 present constitutional claims for habeas corpus relief or under
8 § 1983. Docket no. 13. Consequently, the Court entered judgment
9 in favor of Respondent.

10 Now pending before the Court is Petitioner's motion to alter
11 or amend the judgment of dismissal. A motion which challenges the
12 Court's final judgment may be brought under either Rule 59(e) or
13 Rule 60(b) of the Federal Rules of Civil Procedure. See Fuller v.
14 M.G. Jewelry, 950 F.2d 1437, 1441-42 (9th Cir. 1991). The present
15 motion, which was filed within ten days of entry of judgment, will
16 be treated as a motion to alter or amend the judgment under Rule
17 59(e). See United States v. Nutri-Cology, Inc., 982 F.2d 394,
18 396-97 (9th Cir. 1992).¹ "A motion for reconsideration under Rule
19 59(e) should not be granted, absent highly unusual circumstances,
20 unless the district court is presented with newly discovered
21 evidence, committed clear error, or if there is an intervening
22 change in the controlling law." McDowell v. Calderon, 197 F.3d
23 1253, 1254 (9th Cir. 1999) (internal quotation and citation
24 omitted).

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27 ¹ Petitioner's motion is deemed filed on March 29, 2012, the
28 date on which he signed the Proof of Service and delivered the
motion to prison authorities for mailing. See Schroeder v.
McDonald, 55 F.3d 454, 459 (9th Cir. 1995)

1 In support of his motion, Petitioner argues that the Court
2 misconstrued the nature of his claims. Specifically, he claims
3 that his intent was to challenge his validation as a gang member
4 and indeterminate sentence in the Secured Housing Unit (SHU) based
5 on the contents of the confiscated mail and the placement of false
6 information in his prison file. He maintains such claim can be
7 brought in a habeas corpus action because his indeterminate
8 retention in the SHU affects his ability to become eligible for
9 parole.

10 As explained to Petitioner previously, the Ninth Circuit has
11 held that "habeas jurisdiction is absent, and a § 1983 action
12 proper, where a successful challenge to a prison condition will
13 not necessarily shorten the prisoner's sentence." Ramirez v.
14 Galaza, 334 F.3d 850, 859 (9th Cir. 2003). In particular, where,
15 as here, a prisoner's successful challenge to his administrative
16 segregation will not necessarily shorten his sentence, habeas
17 jurisdiction does not lie. See id. In this case, even if
18 Petitioner is successful in attacking his gang validation,
19 expunging the records from his prison file and terminating his
20 confinement in the SHU, "[t]he parole board will still have the
21 authority to deny [his] request[] for parole on the basis of any
22 of the grounds presently available to it in evaluating such a
23 request." Id. (internal quotation and citation omitted). Because
24 a successful claim would not necessarily result in Petitioner's
25 release on parole, he may not proceed with his claim by way of
26 federal habeas corpus.

27 Petitioner has not presented the Court with newly discovered
28 evidence, shown that the Court committed clear error, or shown

1 that there has been an intervening change in the controlling law
2 that would change the Court's ruling. Accordingly, his motion to
3 alter or amend the judgment of dismissal is DENIED.

4 This Order terminates Docket no. 16.

5 IT IS SO ORDERED.

6 Dated: 12/27/2012



CLAUDIA WILKEN
United States District Judge

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