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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JERRY BROWN,  
Plaintiff,  
  
v.  
  
RAYMOND MADDEN,  
Defendant.

Case No. [17-cv-02691-PJH](#)

**ORDER DENYING MOTION FOR RECONSIDERATION**

Re: Dkt. No. 35

Petitioner, a pro se state prisoner, brought a habeas petition under 28 U.S.C. § 2254. The court previously granted respondent’s motion to dismiss and dismissed four of the seven claims in the petition as procedurally defaulted. Docket No. 34. The petition continues with three claims. Petitioner has filed a motion for reconsideration of the dismissed claims.

Where the court's ruling has not resulted in a final judgment or order, reconsideration of the ruling may be sought under Rule 54(b) of the Federal Rules of Civil Procedure, which provides that any order which does not terminate the action is subject to revision at any time before the entry of judgment. See Fed. R. Civ. P. 54(b). “Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

The claims were dismissed as procedurally defaulted because the California Supreme Court denied the claims as untimely and relied on a state law ground that was independent of federal law and adequate to support the judgment. Petitioner set forth the

1 cause and prejudice standard in his opposition but presented no specific arguments  
2 showing that he had cause to default his claims. The court has reviewed petitioner's  
3 motion for reconsideration, but he has still not presented sufficient arguments to  
4 demonstrate cause and prejudice. While petitioner may have delayed presenting all of  
5 his claims in this federal habeas petition, he does not discuss why he was delayed  
6 presenting his claims in state court. Nor has he shown that he will be prejudiced. The  
7 motion for reconsideration (Docket No. 35) is **DENIED**. Petitioner may file a traverse to  
8 the answer by **October 23, 2019**.

9 **IT IS SO ORDERED.**

10 Dated: October 3, 2019

11  
12 /s/ Phyllis J. Hamilton  
13 PHYLLIS J. HAMILTON  
14 United States District Judge  
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