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**\*E-FILED - 8/2/10\***

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

STEVEN OWENS,	)	No. C 06-4778 RMW (PR)
	)	
Plaintiff,	)	ORDER DENYING MOTION FOR RELIEF UNDER
	)	RULE 60(B)
v.	)	
	)	(Docket No. 71)
A. PADILLA, et. al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility (“CTF”) in Soledad, California. After full briefing, on September 30, 2009, this court granted defendants’ motion for summary judgment and entered judgment for the defendants. On December 23, 2009, plaintiff filed an untimely notice of appeal to the Ninth Circuit Court of Appeal. On February 9, 2010, the Ninth Circuit dismissed the appeal for lack of jurisdiction. See Owens v. Padilla, et al., No. 09-17909 (9th Cir. Feb. 9, 2010). On April 23, 2010, the Ninth Circuit denied a motion for reconsideration filed by plaintiff. On May 3, 2010, the Ninth Circuit issued its mandate.

On July 12, 2010, plaintiff filed in this court a motion for relief from judgment under Federal Rule of Civil Procedure 60(b). Plaintiff asserts that he should have received a notice regarding his rights and obligations for filing an appeal similar to the notice given to pro se

1 litigants in Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

2 Rule 60(b) provides for reconsideration where one or more of the following is shown: (1)  
3 mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by  
4 due diligence could not have been discovered before the court's decision; (3) fraud by the  
5 adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason  
6 justifying relief. Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc., 5 F.3d 1255, 1263 (9th  
7 Cir.1993). "Rule 60(b) [] provides a mechanism for parties to seek relief from a judgment when  
8 "it is no longer equitable that the judgment should have prospective application," or when there  
9 is any other reason justifying relief from judgment. Jeff D. v. Kempthorne, 365 F.3d 844, 853-  
10 54 (9th Cir. 2004) (quoting Fed. R. Civ. P. 60(b)).

11 The court is not persuaded. First, the Rand requirement is specific to Rule 56 motions  
12 and is irrelevant to Federal Rule of Appellate Procedure 4. See Rand, 154 F.3d at 957-58.  
13 Second, there are very limited circumstances in which the district court vacate its prior judgment  
14 pursuant to a Rule 60(b) motion filed after the time to appeal has expired, as it has here, and  
15 re-enter judgment to permit the filing of a timely notice of appeal. Rodgers v. Watt, 722 F.2d  
16 456, 458-59 (9th Cir. 1983) (en banc). Relief under Watt is only available where the petitioner  
17 can demonstrate due diligence and excusable neglect, and then only where the excusable neglect  
18 arose after expiration of the time to file a motion for extension of time to file an appeal under  
19 Fed. R. App. P. 4(a)(5); Watt, 722 F.2d at 459. However, "[w]hen relief from judgment is  
20 sought after the thirty day period allowed by Rule 4(a)(5), the applicability of the Rule 60(b)(1)  
21 excusable neglect standard may be questioned as being counter to the policy indicated by Rule  
22 4(a)(5)'s time frame." Watt, 722 F.2d at 459.

23 Here, petitioner claims his notice of appeal was untimely because of excusable neglect  
24 due to "oversight" and an "innocuous mistake." Relief under Rule 60(b)(6) requires a party to  
25 "show 'extraordinary circumstances,' suggesting that the party is faultless in the delay." Pioneer  
26 Inv. Services Co. v. Brunswick Associates Ltd., 503 U.S. 380, 392 (1993). Such relief  
27 "normally will not be granted unless the moving party is able to show both injury and that  
28 circumstances beyond its control prevented timely action to protect its interests." United States

1 v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993). Petitioner has failed to  
2 show either.

3 In addition, Federal Rule of Appellate Procedure 4(a)(6), explicitly sets time limits for  
4 filing a motion in the district court to reopen the time to appeal when a party did not receive  
5 notice of entry of judgment. That Rule provides that the petitioner must have failed to receive  
6 notice of entry of judgment within 21 days after entry of judgment, and that the motion must be  
7 filed within 180 days after entry of judgment or within 14 days after the moving party receives  
8 notice of entry of judgment. Fed. R. App. P. 4(a)(6). Because petitioner also does not meet this  
9 standard, there is no basis for relief.

10 Accordingly, petitioner's motion is DENIED. This order terminates docket no. 71.

11 IT IS SO ORDERED.

12 DATED: 7/30/10

  
RONALD M. WHYTE  
United States District Judge