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

MARTIN D. ROYAL,)	No. C 08-5628 RMW (PR)
)	
Petitioner,)	ORDER DENYING MOTION TO AMEND
)	
vs.)	
)	
M. MARTEL, Warden,)	
)	
Respondent.)	
)	

18 On December 17, 2008, petitioner, a California prisoner proceeding pro se, filed a writ of
19 habeas corpus pursuant to 28 U.S.C. § 2254. On October 5, 2010, the court denied petitioner’s
20 petition for writ of habeas corpus, and entered judgment in favor of the respondent. On April 13,
21 2012, the Ninth Circuit Court of Appeal denied a certificate of appealability. On April 11, 2014,
22 petitioner filed the instant motion to amend his petition.

23 It is settled law in this circuit that one cannot use Rule 15 once an action has been
24 dismissed and a final judgment entered unless the judgment is set aside under Federal Rules of
25 Civil Procedure 59(e) or 60(b). See Lindauer v. Rogers, 91 F.3d 1355, 1357 (9th Cir. 1996)
26 (“[O]nce judgment has been entered in a case, a motion to amend the complaint can only be
27 entertained if the judgment is first reopened under a motion brought under Rule 59 or 60”). This
28 rule applies equally to habeas petitions. See Woodford v. Garceau, 538 U.S. 202, 208 (2003)

1 (“The Federal Rules of Civil Procedure apply in the context of habeas suits to the extent that
2 they are not inconsistent with the Habeas Corpus Rules.”). Re-opening a case is a high hurdle to
3 overcome, as judgment is not properly reopened “absent highly unusual circumstances, unless
4 the district court is presented with newly discovered evidence, committed clear error, or if there
5 is an intervening change in the controlling law.” Weeks v. Bayer, 246 F.3d 1231, 1236-37 (9th
6 Cir. 2001).

7 Here, the court will not entertain a motion for relief from judgment, as petitioner has
8 failed to demonstrate any of the grounds which might warrant such relief. Rather, he simply
9 raises new claims of trial error, which would have been apparent to him at the time of his
10 conviction. Thus, even if petitioner had filed a proper motion for relief from judgment, such
11 relief would not be available.

12 Finally, construing this pleading as a new petition for writ of habeas corpus challenging
13 the state court judgment under which petitioner is currently serving a prison sentence, the
14 petition must be dismissed as successive under 28 U.S.C. § 2244(b)(3)(A), because permission
15 for filing has not been obtained from the court of appeal.

16 Petitioner’s motion to amend is DENIED. No further filings will be accepted in this
17 closed case.

18 IT IS SO ORDERED.

19 DATED: _____
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RONALD M. WHYTE
United States District Judge

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E-FILED - 1/31/11

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

MARTIN D. ROYAL,

No. C 08-5628 RMW (PR)

Petitioner,

ORDER DENYING APPLICATION TO
PROCEED IN FORMA PAUPERIS ON
APPEAL

v.

M. MARTEL, Warden,

Respondent.

(Docket No. 33)

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 5, 2010, the court denied the petition, entered judgment in favor of respondent, and declined to issue a certificate of appealability. Petitioner has filed a notice of appeal and a motion to waive filing fees on appeal. The court construes plaintiff's motion as an application to proceed IFP on appeal.

Because the court declined to issue a certificate of appealability in the order denying the petition, petitioner's request to proceed IFP on appeal (docket no. 32) is also DENIED. When the court declined to issue a certificate of appealability in the order denying the petition, it determined that there were no valid grounds for an appeal. Accordingly, granting the petitioner's application to proceed IFP on appeal would not be appropriate.

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This order terminates docket no. 32.

IT IS SO ORDERED.

DATED: 1/28/11

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge