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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 THADDEUS BOUDREAUX,  
12  
13 vs. Petitioner,  
14 JAMES WALKER, et al.,  
15 Respondents.  
16

CASE NO. 09-CV-0662 BEN (BLM)  
**ORDER DENYING PETITIONER'S  
MOTION FOR RECONSIDERATION**

[Docket No. 23]

17 On April 1, 2009, Petitioner Thaddeus Boudreaux, a state prisoner proceeding *pro se*, filed  
18 a petition for writ of *habeas corpus* under 28 U.S.C. § 2254 ("Petition"), challenging his sentence  
19 for a variety of crimes. On February 1, 2010, Magistrate Judge Barbara Major issued a Report and  
20 Recommendation, recommending that the Petition be dismissed as untimely. (Docket No. 16.) On  
21 May 11, 2010, having reviewed the Report and Recommendation and Petitioner's objections  
22 thereto, and after conducting a de novo review of the issues, the Court adopted the Report and  
23 Recommendation and dismissed the Petition. (Docket No. 20.) Petitioner now requests that the  
24 Court reconsider that Order.

25 **BACKGROUND**

26 On August 8, 1997, a jury convicted Petitioner of kidnaping with personal use of a firearm  
27 in violation of California Penal Code ("Cal. Penal Code") §§207(a), 12022.5(a), attempted robbery  
28 with the personal use of a firearm, Cal. Penal Code §§ 664, 211, 213(b), 12022.5(a), assault with

1 the personal use of a firearm, Cal. Penal Code § 245(a)(2), kidnaping for sexual purposes with the  
2 personal use of a firearm, Cal. Penal Code §§ 207, 208(d), 12022.5(a), oral copulation while acting  
3 in concert with the use of a firearm, having kidnaped the victim for the purpose of committing a  
4 sexual offense, Cal. Penal Code §§ 288a(d), 12022.3(a), 667.8(a), forcible rape while acting in  
5 concert with the use of a firearm, having kidnaped the victim for the purpose of committing a  
6 sexual offense, Cal. Penal Code §§ 261(a)(2), 12022.3(a), 264.1, 667.8(a), two counts of forcible  
7 sodomy while acting in concert with the use of a firearm, having kidnaped the victim for the  
8 purpose of committing a sexual offense, Cal. Penal Code §§ 286(b), 12022.3(a), 667.8(a), forcible  
9 oral copulation with the use of a firearm, having kidnaped the victim for the purpose of committing  
10 a sexual offense, Cal. Penal Code §§ 288a(c), 12022.3(a), possessing a firearm after having been  
11 convicted of a prior violent felony, Cal. Penal Code § 12021(a) and possessing a firearm as an ex-  
12 felon, Cal. Penal Code § 12021(a). (Lodgment 1 at 1-2.) Petitioner was sentenced to a term of  
13 seventy-five years and eight months. (*Id.* at 2.)

14         Petitioner sought review from various higher state courts, until finally he filed a petition in  
15 this Court for writ of habeas corpus under 28 U.S.C. § 2254. Under the Petition, Petitioner alleges  
16 his sentence violates the Sixth and Fourteenth Amendments and the Due Process Clause of the  
17 United States Constitution.

18         Respondent filed a Motion to Dismiss (“Motion”), arguing the Petition is not timely.  
19 (Docket No. 11.) Petitioner opposed the Motion, arguing that the limitations period was equitably  
20 tolled or, in the alternative, the Petition is timely pursuant to subsection D of AEDPA. (Docket  
21 No. 19.) Respondent did not file a reply.

22         On February 1, 2010, Magistrate Judge Major issued a Report and Recommendation,  
23 recommending that the Court grant the Motion and dismiss the Petition, to which Petitioner filed  
24 an Objection. This Court reviewed the issues de novo and, on May 11, 2010, filed an order  
25 (“Order”) adopting the Report and Recommendation and dismissing the Petition accordingly.  
26 (Docket No. 20.) Almost a year later, Petitioner filed the Motion currently before the Court,  
27 seeking review of that Order.

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**DISCUSSION**

Petitioner moves for reconsideration under Federal Rule of Civil Procedure 60(b). Rule 60(b) allows for reconsideration due to:

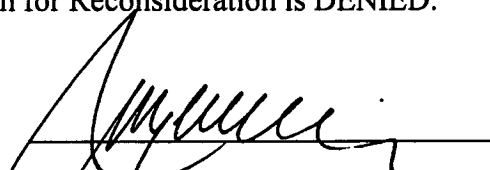
- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Petitioner argues that subsections 1 and 6 apply. However, Petitioner merely restates the same arguments asserted in the Petition; Petitioner does address the timeliness issues that provided the basis for the Order, nor does he discuss how the Court's Order is based on "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). Petitioner's argument that his sentence is fundamentally unfair also does not provide a "reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Accordingly, Petitioner has failed to show that any grounds exist to reconsider the Order.

**CONCLUSION**

For the reasons set forth above, Petitioner's Motion for Reconsideration is DENIED.  
IT IS SO ORDERED.

DATED: May 13, 2011

  
Hon. Roger T. Benitez  
United States District Judge