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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 WILLIAM FRED WOOTEN,
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Petitioner,
v.
SCOTT KERNAN, et al.,
Respondents.

Case No.: 17-cv-0094-AJB-WVG

**ORDER GRANTING RESPONDENT’S
MOTION FOR RECONSIDERATION
(Doc. No. 17)**


After the Court issued its ruling concluding the record supported a finding that Wooten was still in state custody due to California’s mandatory parole, (Doc. No. 15), the state deputy attorney found evidence—obtained four days post-ruling—that Wooten had been discharged from parole on March 3, 2016. (Doc. No. 17-1 at 1.) Although this evidence confirms he indeed was not in state custody when he filed his habeas petition, it was absent from the 877-page administrative record filed with the Court. (Doc. No. 9.) It also was not mentioned in the post-R&R objection period, as no reply was filed in response to Wooten’s objections, in which he first raised this argument. (Doc. No. 14.)

The Court has discretion under Federal Rule of Civil Procedure 54(b) and local rule 7.1(1) to grant reconsideration motions when there are “new or different facts and circumstances . . . which did not exist, or were not shown . . .” before. CivLR7.1(i)(1). Although the parole discharge sheet is not newly discovered evidence, it was not previously obtained or shown in the record. Because the evidence now shows Wooten was not in

1 custody when he filed his petition in January 2017, he does not fulfill the 28 U.S.C. § 2254
2 custody requirements. Only those “in custody pursuant to the judgment of a State court”
3 may file a § 2254 habeas petition. 28 U.S.C. § 2254; *Brock v. Weston*, 31 F.3d 887, 889
4 (9th Cir. 1994). Thus, since Wooten was neither in state custody nor on parole when he
5 filed his petition, the Court lacks jurisdiction over his claims. The Court **GRANTS**
6 respondent’s reconsideration motion and **DISMISSES** Wooten’s petition for lack of
7 jurisdiction.

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9 **IT IS SO ORDERED.**

10 Dated: January 3, 2018

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12 Hon. Anthony J. Battaglia
13 United States District Judge
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