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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

STEVEN ERIC WALKER,

Plaintiff,

v.

UNITED STATES OF AMERICA, THE
STATE OF CALIFORNIA, And All
Actors, Agents, and Elected Officials
Thereof, and Does 1 through 100
Respectively,

Defendants.

Case No.: 20-cv-31 DMS (AGS)

**ORDER DENYING PLAINTIFF’S
MOTION FOR RECONSIDERATION**

Before the Court is Plaintiff’s Motion for Reconsideration of this Court’s order dismissing Plaintiff’s Complaint for failure to state a claim. (ECF No. 6.) On January 6, 2020, Plaintiff filed a Complaint alleging that state and federal laws infringe on his Second Amendment right under the United States Constitution to possess firearms for self-defense despite his status as a convicted felon. (Compl., ECF No. 1, at ¶ 1 & Conclusion.) Plaintiff contends that “defendants do not have any legitimate or rational government interest or function in making laws which infringe upon [his] right to keep and bear firearms in the defense of his home, family, life, or community regardless of his previous status.” (Mem. & Auth. in Sup. of Compl., at 16.) Plaintiff also submitted a motion to proceed in forma

1 pauperis (IFP). (ECF No. 2.) On April 24, 2020, the Court granted Plaintiff’s Motion to
2 Proceed IFP pursuant to 28 U.S.C. § 1915(a) and sua sponte dismissed Plaintiff’s
3 Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim under Ninth
4 Circuit and Supreme Court precedent upholding the constitutionality of laws that curtail
5 Second Amendment rights of convicted felons. (Order, ECF No. 3, at 4.) Plaintiff now
6 moves the Court to reconsider its earlier order.

7 **I.**

8 **LEGAL STANDARD**

9 Rule 59(e) allows for a party to submit a motion to alter or amend a judgment. Fed.
10 R. Civ. P. 59(e).¹ “The purpose of Rule 59(e) is ‘to allow the district court to correct its
11 own errors, sparing the parties and appellate courts the burden of unnecessary appellate
12 proceedings.’” *Sanchez v. Davis*, --- F. Supp. ----, 2016 WL 1643468, at *1 (E.D. Cal. Apr.
13 26, 2016) (quoting *Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008)).

14 In general, “there are four basic grounds upon which a Rule 59(e) motion may be
15 granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which
16 the judgment rests; (2) if such motion is necessary to present newly discovered or
17 previously unavailable evidence; (3) if such motion is necessary to prevent manifest
18 injustice; or (4) if the amendment is justified by an intervening change in controlling law.”
19 *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). “[A]mending a judgment
20 after its entry remains an extraordinary remedy which should be used sparingly.” *Id.*
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24 ¹ Motions for reconsideration are also subject to Civil Local Rule 7.1(i)(1), which requires
25 applications for reconsideration to “present to the judge ... an affidavit of a party or witness
26 or certified statement of an attorney setting forth the material facts and circumstances
27 surrounding each prior application, including inter alia: (1) when and to what judge the
28 application was made, (2) what ruling or decision or order was made thereon, and (3) what
new or different facts and circumstances are claimed to exist which did not exist, or were
not shown, upon such prior application.” Plaintiff, proceeding pro se, has not complied
with the Local Rule but the Court excuses the failure and addresses the motion.

1 (internal quotation marks and citations omitted.) Plaintiff appears to move the Court “to
2 correct manifest errors of law or fact upon which the judgment rests[.]” See *id.*

3 “Manifest error is, effectively, clear error.” *Teamsters Local 617 Pension and*
4 *Welfare Funds v. Apollo Group, Inc.*, 282 F.R.D. 216, 231 (D. Ariz. 2012) (citing *Ybarra*
5 *v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011)). The Ninth Circuit has not defined “clear
6 error” for the purposes of a motion for reconsideration under Rule 59(e), (*Campion v. Old*
7 *Republic Home Protection Co., Inc.*, --- F. Supp. 2d ---, 2011 WL 1935967 at *1 (S.D. Cal.
8 2011)), but it is certainly a “very exacting standard.” *Id.* “Mere doubts or disagreement
9 about the wisdom of a prior decision ... will not suffice for this exception. To be clearly
10 erroneous, a decision must strike us as more than just maybe or probably wrong; it must be
11 dead wrong.” *Id.* (quoting *Hopwood v. Texas*, 236 F.3d 256, 273 (5th Cir. 2000) (internal
12 quotation marks omitted) (analyzing standard in the Fifth Circuit)). Moreover, “the movant
13 must demonstrate a ‘wholesale disregard, misapplication, or failure to recognize
14 controlling precedent.’” *Id.* (quoting *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th
15 Cir. 2000) (analyzing standard in the Seventh Circuit)).

16 II.

17 DISCUSSION

18 Here, Plaintiff contends the Court erred in its findings for several reasons: (1) by
19 categorizing him as a felon, even though “he is and has been a law-abiding citizen for
20 approximately 30 plus years, with the exception of one incident in April of 1990,” has not
21 committed any crimes since April 27, 2020, and was paroled from prison because he
22 “earned his place back in society”; (2) by addressing the Complaint with regard to the rights
23 of felons, even though the Complaint did not “state anything about felons,” but requested
24 an injunction to support the right of “law-abiding” citizens; (3) by using Plaintiff’s
25 memorandum of points and authorities when addressing Plaintiff’s claims; and (4) by
26 dismissing Plaintiff’s case for failure to state a claim by relying on Ninth Circuit and
27 Supreme Court precedent when “stare decisis does not apply” and the cases relied on by
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1 the Court were an “incorrect interpretation of the law.” (See Mot. to Recon. (“Mot.”), ECF
2 No. 6, at 2–15) (emphasis in original.) Plaintiff’s arguments are addressed in turn.

3 A. Categorization as “Felon”

4 First, Plaintiff contends the Court was wrong to interpret his Complaint as it did,
5 referring to Plaintiff as a “felon” seeking to vindicate his right to bear arms. To that end,
6 Plaintiff notes he never referred to himself as a “felon,” but rather only stated he had “a
7 historical conviction, but the one-time conviction does not now outweigh the fact[] that he
8 is a law-abiding citizen and has been for over 30 years.” (Mot. at 3) (emphasis in original).
9 Accordingly, Plaintiff contends the Court should have used “judicial experience and
10 common sense ... to conclude that a one-time conviction when a person was 26 years old,
11 does not rationally indicate a serious or major threat to public safety as age 56, after 30
12 plus years of law-abiding and conforming behavior.” (Id.) Unfortunately for Plaintiff, all
13 that matters is that Plaintiff previously suffered a felony conviction that disqualifies him
14 from possessing firearms under state and federal law. There is no dispute that Plaintiff has
15 suffered such a conviction.

16 Plaintiff admits in his Complaint that he was convicted of premeditated attempt
17 murder with use of a firearm in violation of California Penal Code §§ 664, 187 and 189 on
18 August 9, 1990, in California Superior Court, County of San Diego, Case No. CR113777.
19 (Compl. at ¶ 3.) For that offense, Plaintiff was sentenced to an indeterminate life term with
20 the possibility of parole. (Id. at ¶ 4.) Plaintiff served 22.6 years and was granted parole on
21 June 26, 2012. (Id.)

22 Plaintiff contends he has been law-abiding since the time of his conviction and no
23 longer poses a risk of danger to society. (Id.) The Court commends Plaintiff for his
24 rehabilitation and accepts as true for purposes of this motion his representation that he has
25 been a law-abiding citizen for decades, is not a danger to others or to society, and now
26 enjoys many constitutional rights, including the right to vote. (See id. at ¶¶ 5-7.) But those
27 facts, even if true, do not entitle Plaintiff to relief. Under the law, Plaintiff’s conviction,
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1 standing alone—not whether Plaintiff is labeled a “felon” or has reformed—divests
2 Plaintiff of his Second Amendment rights.

3 **B. Law Abiding Citizens**

4 Plaintiff contends he is not seeking to restore the right of “felons” to bear arms, but
5 to restore the right of “law-abiding citizens” to bear arms. (Mot. at 2-3.) This distinction
6 does not assist Plaintiff. Individuals who have a prior felony conviction like Plaintiff’s,
7 cannot restore their Second Amendment rights under existing law, except in limited
8 circumstances, even if they become law-abiding citizens.² The Court cannot restore those
9 rights. Only the Legislature can.

10 **C. Complaint**

11 Next, Plaintiff contends the Court erred by considering the memorandum and
12 authorities he submitted along with his Complaint. Plaintiff notes “the verified Complaint”
13 is “the only document which can be reviewed under a summary dismissal.” (Mot. at 3)
14 (emphasis in original). Plaintiff argues that the Court does not “credit[] the entire factual
15 context of Complaint,” because it relied on “legal arguments set forth in a separate
16 Memorandum of Points and Authorities submitted with the complaint.” (Mot. at 3-4.)

17 “Review is generally limited to the contents of the complaint, but a court can
18 consider a document on which the complaint relies if the document is central to the
19 plaintiff’s claim, and no party questions the authenticity of the document.” *Sanders v.*
20 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). Here, Plaintiff submitted the memorandum of
21 authorities himself, and accordingly did not indicate that he “question[ed] the authenticity
22 of the document.” See *id.* Moreover, Plaintiff submitted the document alongside the
23 Complaint, and titled it: “Memorandum of Points and Authorities in Support of Complaint
24 for Declaratory and Injunctive Relief.” (ECF No. 1-2.) The document was filed along
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27 ² Generally, a person sentenced to prison on a felony cannot restore their right to bear arms
28 under the Second Amendment unless they get a Certificate of Rehabilitation and a Pardon
by the Governor’s Office. See California Penal Code § 4852.01.

1 with the Complaint, referred to the Complaint, and set forth arguments in support of it.
2 (See generally *id.*) As such, the Court interpreted the document as supporting the
3 Complaint. Given these circumstances, the Court did not err in relying on the
4 memorandum of points in authorities in addition to the Complaint.

5 D. Stare Decisis: Heller and Vongxay

6 Finally, in the Order dismissing Plaintiff’s Complaint, the Court relied on Ninth
7 Circuit and Supreme Court precedent upholding the constitutionality of laws barring felons
8 (i.e., a person who has suffered a prior felony conviction) from possessing or owning
9 firearms. Plaintiff contends reconsideration is warranted because the Court erred in relying
10 on that precedent.

11 First, the Court relied on *Heller v. District of Columbia*, where the Supreme Court
12 stated, “nothing in our opinion should be taken to cast doubt on the longstanding
13 prohibitions on possession of firearms by felons.” (Order at 3-4) (quoting 128 S. Ct. 2783,
14 2816–17 (2008)). In response, Plaintiff contends that the Court erred because stare decisis
15 does not apply. To that end, Plaintiff notes that “the Supreme Court has unequivocally
16 stated that “[o]ur precedents are not sacrosanct” because decisions and opinions of the
17 Court can change based on varying and substantial circumstances.” (Mot. at 6-7)
18 (emphasis in original). Further, Plaintiff states he is “not asking this Court to overrule any
19 prior judicial decision,” but rather “to construe and interpret the Second Amendment in
20 accordance with its plain meaning.” (*Id.* at 7.) Notwithstanding Plaintiff’s arguments, the
21 Complaint seeks an injunction to invalidate laws that impinge on the right of certain
22 individuals to bear arms, specifically, those who have suffered a prior felony conviction
23 and imprisonment. But in interpreting the Second Amendment, the Supreme Court in
24 *Heller* held that legislative bodies are free to enact laws that prohibit possession of firearms
25 by felons. See 128 S.Ct. at 2816-17. The precedent in *Heller* can only be changed by the
26 Supreme Court itself and that has not happened. Accordingly, the Court did not err in
27 dismissing Plaintiff’s complaint under *Heller* because that case is squarely on point and
28 binding on this Court.

1 The Court also set out cases in the Order from the Ninth Circuit which recognize the
2 validity of statutes barring felons from possessing firearms, including *United States v.*
3 *Vongxay*, *United States v. Smith*, and *United States v. Gilbert*. (Order at 4) (citations
4 omitted). Plaintiff contends the Court impermissibly relied on *Vongxay* because the
5 plaintiff there was “the type of felon who refuses to reeducate themselves in order to
6 become a productive and conforming member of society,” in contrast with Plaintiff, who
7 contends he is part of a category of “law abiding, responsible citizens who have a
8 fundamental right to bear arms.” (Mot. at 16-17.) Plaintiff’s argument does not
9 demonstrate “clear error” by the Court. Notably, the Court relied on *Vongxay* to the extent
10 it recognized decisions within the Ninth Circuit that held *Heller* did not expand the rights
11 of felons to possess firearms. (Order at 4.) See also *United States v. Smith*, 329 Fed. Appx.
12 109, 111 (9th Cir. 2009) (“*Heller* did not disturb Lewis’s narrow holding—that felons have
13 no constitutional right to possess firearms.”)

14 Plaintiff does not provide any new evidence showing that the Court erred in its
15 earlier holding. “Ultimately, a party seeking reconsideration must show more than a
16 disagreement with the Court’s decision, and recapitulation of the cases and arguments
17 considered by the court before rendering its original decision fails to carry the moving
18 party’s burden.” *Cachil Dehe Band of Wintun Indians v. California*, 649 F. Supp. 2d 1063,
19 1070 (E.D. Cal. 2009) (internal citation and quotation marks omitted). Accordingly,
20 Plaintiff’s motion is denied.

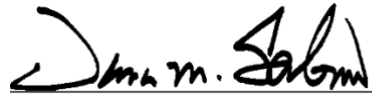
21 III.

22 CONCLUSION AND ORDER

23 For the foregoing reasons, the Court respectfully denies Plaintiff’s motion for
24 reconsideration.

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26 **IT IS SO ORDERED.**

1 Dated: August 4, 2020

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4 Hon. Dana M. Sabraw
5 United States District Judge
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