

1

2

3

4

5

6

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7

8

9 GENE ALLEN,

10 *Petitioner,*

2:03-cv-00770-KJD-PAL

11 vs.

ORDER

12

13 STATE OF NEVADA, *et al.,*14 *Respondents.*

15

16 This long-closed habeas matter comes before the Court on petitioner's motion (#18)
17 to vacate judgment.

18 Final judgment was entered in this matter on September 3, 2003. The Court dismissed
19 the action without prejudice because petitioner failed to comply with the Court's order to either
20 pay the filing fee or submit a properly-completed pauper application.¹ Over four years later,
21 in February 2008, petitioner sought to pursue an untimely appeal. Both this Court and the
22 Court of Appeals denied a certificate of appealability.

23 The present motion, filed in July 2010, is untimely. A motion to vacate judgment under
24 subparagraphs (1), (2) or (3) of Rule 60(b) must be filed within a year of entry of judgment,
25 and a motion under the remaining provisions of the rule must be filed within a reasonable
26 time. The Court finds that the present motion was not filed within a reasonable time.

27

28 ¹Petitioner also submitted a notice of voluntary dismissal, which was received and filed on September 11, 2003.

1 The motion in any event does not present a viable basis for relief for judgment.
2 Petitioner's argument consists only of conclusory sentences or sentence fragments
3 interspersed with case citations having no application to this case. Petitioner's conclusory
4 references to mail having "made compliance slow but impractical" and to "unexhausted claims
5 may be deleted to now file anew" do not provide a basis to vacate the judgment entered in
6 this case, particularly nearly seven years after entry of judgment.²

7 IT THEREFORE IS ORDERED that petitioner's motion (#18) to vacate judgment is
8 DENIED.

9 DATED: July 9, 2010



10
11
12 KENT J. DAWSON
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25

26 ²Petitioner has filed substantially the same motion in other closed habeas actions in this District.
27 Petitioner's mere placing of "28 USC @1746" above his signature does not make the motion one filed
28 pursuant to a sworn declaration. The conclusory assertions in the motion in any event, sworn or not, do not
 set forth a viable basis for relief from judgment.