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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 CURTIS L. DOWNING,

6 Petitioner,

7 vs.

8 BRIAN WILLIAMS, *et al.*,

9 Respondents.
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Case No. 2:13-cv-01576-JAD-VCF

ORDER

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12 This is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a
13 Nevada state prisoner. By order filed January 14, 2014, the Court dismissed this action because it
14 appeared that petitioner failed to obey the Court's order to submit the filing fee. (Doc. 5).
15 Judgment was entered on January 15, 2014. (Doc. 6).

16 Petitioner filed a motion for reconsideration pursuant to Rule 60(b) of the Federal Rules of
17 Civil Procedure. (Doc. 7). Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final
18 judgment or order for the following reasons:

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

28 In the instant case, on October 23, 2013, the Court denied petitioner's application to proceed
in forma pauperis and directed petitioner to pay the \$5.00 filing fee for this action. (Doc. 2).
Petitioner filed a motion for an extension of time to pay the filing fee. (Doc. 3). On November 26,
2013, the Court granted petitioner an additional thirty days in which to pay the filing fee. (Doc. 4).
Petitioner's \$5.00 filing fee was due on December 26, 2013. Because it appeared that petitioner

1 failed to obey the Court's order directing payment of the filing fee, the Court dismissed this action
2 by order filed January 15, 2014. (Doc. 5).

3 Although the Court's docket does not reflect the receipt of payment of the filing fee,
4 petitioner contends in his motion for reconsideration that on November 19, 2013, he filled out the
5 proper paperwork to have the prison issue a check to the Clerk of this Court for \$5.00. Petitioner
6 has attached to his motion a copy of his inmate account statement that supports his contention and
7 confirms that a \$5.00 payment was collected from his inmate account to satisfy the payment of the
8 \$5.00 filing fee in this action. (Doc. 7, at p. 4). The Court cannot explain why the Clerk of Court
9 never received or processed the filing fee submitted by petitioner. Under the circumstances, the
10 Court deems that petitioner has paid the filing fee, and petitioner's motion for reconsideration is
11 granted.

12 The Court has reviewed the habeas petition in the instant action. Although petitioner has
13 filed other habeas actions in this Court, those actions dealt with petitioner's state court convictions.
14 In the instant petition, petitioner challenges the result of a prison disciplinary hearing at which he
15 alleges a denial of due process that affected his ultimate duration of incarceration. Thus, the petition
16 is not successive, and it shall be served on respondents. Respondents shall file a response to the
17 petition, as set forth at the conclusion of this order.

18 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration (Doc. 7) is
19 **GRANTED**. The dismissal order and judgment in this action (Docs. 5 & 6) are **SET ASIDE**.

20 **IT IS FURTHER ORDERED** that the Clerk of Court **SHALL REOPEN** this action.

21 **IT IS FURTHER ORDERED** that the Clerk of Court shall **FILE and**
22 **ELECTRONICALLY SERVE** the petition (Doc. 1-1) upon the respondents.

23 **IT IS FURTHER ORDERED** that respondents shall have 45 days from entry of this order
24 to answer or otherwise respond to the petition. In their answer or other response, respondents shall
25 address all claims presented in the petition. Respondents shall raise all potential affirmative
26 defenses in the initial responsive pleading, including lack of exhaustion and procedural default.


27 **Successive motions to dismiss will not be entertained**. If an answer is filed, respondents shall
28 comply with the requirements of Rule 5 of the Rules Governing Proceedings in the United States

1 District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have **45 days** from the
2 date of service of the answer to file a reply.

3 **IT IS FURTHER ORDERED** that any state court record exhibits filed by respondents shall
4 be filed with a separate index of exhibits identifying the exhibits by number or letter. The hard copy
5 of all state court record exhibits shall be forwarded, for this case, to the staff attorneys in the **Reno**
6 Division of the Clerk of Court.

7 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney
8 General of the State of Nevada a copy of every pleading, motion, or other document he submits for
9 consideration by the Court. Petitioner shall include with the original paper submitted for filing a
10 certificate stating the date that a true and correct copy of the document was mailed to the Attorney
11 General. The Court may disregard any paper that does not include a certificate of service. After
12 respondents appear in this action, petitioner shall make such service upon the particular Deputy
13 Attorney General assigned to the case.

14 Dated this 6th day of August, 2014.

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19 UNITED STATES DISTRICT JUDGE
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