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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

STEVEN BRAUNSTEIN,  
Plaintiff,  
v.  
MICHAEL P. VILLANI,  
Defendants.

Case No. 2:15-cv-00687-JAD-VCF

**Order Denying Motion for  
Reconsideration and Motion for  
Declaratory Order**

**[ECF 18, 19]**

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Plaintiff Steven Braunstein is a prisoner in the custody of the Nevada Department of Corrections. He purports to bring a civil-rights action under 42 U.S.C. § 1983, and he sued a handful of Nevada state court judges, Nevada’s current and former Attorney General, the State of Nevada and the Eighth Judicial District Court for conduct, procedures, and events that occurred during his January 2000 state-court sexual-assault prosecution.<sup>1</sup> In an October 20, 2015, order, I dismissed this case with prejudice because this suit is barred by the *Rooker-Feldman* doctrine, and that fatal defect cannot be cured by amendment.<sup>2</sup> Plaintiff now asks for reconsideration and a declaratory judgment in his favor.<sup>3</sup> I deny both motions.

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**Discussion**

When a ruling has resulted in a final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure

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<sup>1</sup> ECF 15, 1-1.

<sup>2</sup> ECF 16.

<sup>3</sup> ECF 18, 19. Plaintiff’s motion for declaratory order, ECF 19, is essentially another motion for reconsideration. It is captioned “Motion for Declaratory Order on Application of Reconsideration of Court’s Order (Doc. 16).” I treat this motion as one for reconsideration.

1 59(e) or a motion for relief from judgment pursuant to Federal Rule 60(b).<sup>4</sup> Under Fed. R. Civ. P.  
2 60(b) the court may relieve a party from final judgment or order for the following reasons:

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

12 Motions to reconsider are generally left to the discretion of the trial court.<sup>5</sup> In order to  
13 succeed on a motion to reconsider, a party must set forth facts or law of a strongly convincing nature  
14 to induce the court to reverse its prior decision.<sup>6</sup> Rule 59(e) of the Federal Rules of Civil Procedure  
15 provides that any “motion to alter or amend a judgment shall be filed no more than 28 days after  
16 entry of the judgment.” Furthermore, a motion under Fed. R. Civ. P. 59(e) “should not be granted,  
17 absent highly unusual circumstances, unless the district court is presented with newly discovered  
18 evidence, committed clear error, or if there is an intervening change in the controlling law.”<sup>7</sup> Federal  
19 courts have determined that there are four grounds for granting a Rule 59(e) motion: (1) the motion  
20 is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) the  
21 moving party presents newly discovered or previously unavailable evidence; (3) the motion is  
22 necessary to prevent manifest injustice; or (4) there is an intervening change in controlling law.<sup>8</sup>

23 In this case, this court properly entered judgment dismissing this action in the order filed

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24 <sup>4</sup> *School Dist. No. 1J Multnomah County v. AC & S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993),  
25 *cert. denied* 512 U.S. 1236 (1994).

26 <sup>5</sup> *See Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987).

27 <sup>6</sup> *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),  
28 *aff’d in part and rev’d in part on other grounds* 828 F.2d 514 (9th Cir. 1987).

<sup>7</sup> *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001) (*quoting McDowell v. Calderon*, 197  
F.3d 1253, 1255 (9th Cir. 1999)).

<sup>8</sup> *Turner v. Burlington Northern Santa Fe R. Co.*, 338 F.3d 1058 (9th Cir. 2003).

1 October 20, 2015.<sup>9</sup> The court properly reviewed and dismissed this action because plaintiff failed to  
2 state a claim upon which relief could be granted as his claim was barred by the *Rooker-Feldman*  
3 doctrine, which prevents a federal court from hearing a case that challenges a state-court  
4 conviction.<sup>10</sup> The court ruled that plaintiff sought to challenge his state-court conviction and the  
5 procedures that led to it, making this case a *de facto* appeal of his January 2000 state-court  
6 conviction.<sup>11</sup>

7 In his motion for reconsideration, plaintiff has not identified any mistake, intervening change  
8 in controlling law, or other factor that would require vacating the judgment. He has not shown that  
9 manifest injustice resulted from dismissal of this action. And he has not presented any newly  
10 discovered or previously unavailable evidence. Plaintiff's main contention in his motion for  
11 reconsideration is that he is seeking "prospective relief" from unconstitutional actions that occurred  
12 during his state-court trial and therefore his claim is not barred.<sup>12</sup> In his amended complaint, plaintiff  
13 moved "for an injunction or declaratory order to void the judgment as unconstitutional."<sup>13</sup> This is  
14 precisely the type of action barred by *Rooker-Feldman*: plaintiff is asserting errors by the state court  
15 and seeks as his remedy relief from the state court judgment. Plaintiff's allegations are plainly  
16 "inextricably intertwined" with the state court's decision such that adjudication of the federal claims  
17 would require the court to interpret the application of state laws or procedural rules.<sup>14</sup> The court does  
18 not have subject matter to hear plaintiff's claims, and he has failed to made an adequate showing  
19 under either Rule 59(e) or Rule 60(b) to justify granting his motions for reconsideration or otherwise  
20 altering my prior decision.

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22 <sup>9</sup> ECF No. 16.

23 <sup>10</sup> *See Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003).

24 <sup>11</sup> ECF No. 16 at 4.

25 <sup>12</sup> ECF No. 18 at 2.

26 <sup>13</sup> ECF No. 15 at 14.

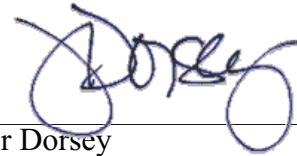
27 <sup>14</sup> *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

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**Conclusion**

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration (**ECF No. 18**) and Motion for Declaratory Order (**ECF No. 19**) **are DENIED**. Any further request for relief in this case should be addressed by appeal.

DATED this 5th day of November, 2015.



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Jennifer Dorsey  
United States District Judge