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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CHARLES ANTHONY SUMMERS,

Petitioner,

Case No. 3:09-CV-000674-LRH-RAM

vs

ORDER

E.K. McDANIELS, *et al*,

Respondents. /

This is an action on an amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, brought by Charles Anthony Summers, appearing pro se. Petitioner has moved for reconsideration of the Court’s order denying his petition and certificate of appealability (ECF No. 27), suggesting that the denial was based on a general bias among the courts.

With respect to petitioner’s motion, where a ruling has resulted in 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 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the

1 judgment should have prospective application; or (6) any other reason justifying relief  
2 from the operation of the judgment.

3 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*  
4 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party  
5 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.  
6 *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986), *aff'd in part*  
7 *and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987). Further, a motion under Fed. R. Civ.  
8 P. 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is  
9 presented with newly discovered evidence, committed clear error, or if there is an intervening change in  
10 the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), *quoting McDowell v.*  
11 *Calderon*, 197 F.3d 1253, 1255 (9<sup>th</sup> Cir. 1999).

12 Petitioner's motion reiterates the claims related to the admission of hearsay testimony through  
13 the police officer and the presence on the jury of an individual who had some relationship with the  
14 prosecutor. He does not present any newly discovered evidence and has not shown that the Court  
15 committed clear error in denying his claims under the strictures of 28 U.S.C. § 2254(d). The motion shall  
16 be denied.

17 **IT IS THEREFORE ORDERED** that the motion to reconsider (ECF No. 27) is **DENIED**.

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19 Dated this 29th day of November, 2011.



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22 LARRY R. HICKS  
23 UNITED STATES DISTRICT JUDGE  
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