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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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GUSTAVO CONTRERAS,

Case No. 3:14-cv-00435-LRH-WGC

Plaintiff,

ORDER

v.

RENEE BAKER,

Defendant.

Before the court is petitioner’s “motion to alter or amend judgment.” ECF No. 49. With the motion, petitioner asks the court to reconsider its order of February 14, 2018, (ECF No. 48) which dismissed as procedurally defaulted Grounds 8, 9, and 10 of his petition for writ of habeas corpus (ECF No. 3). In particular, petitioner argues that the court erred in deciding petitioner had not made a sufficient showing of actual innocence for the purpose of excusing his procedural defaults.

The underlying conviction in this case is battery by a prisoner, which was based on evidence that the petitioner, while an inmate at Clark County Detention Center, “sucker-punched” another inmate, Christian Contreras, then sliced his head with a sharp object. To show actual innocence, petitioner provided the court with two items -- a “Booking Summary Report” for Christian Contreras generated by the Nevada Department of Corrections (ECF No. 16-2, p. 56) and a declaration signed by an inmate who claims to have been Christian Contreras’s cellmate and to have witnessed at least a portion of the altercation (ECF No. ECF No. 18, p. 5-6).

1 According to petitioner, the court overlooked and/or misunderstood aspects of
2 the proffered evidence and misapplied the actual innocence standard articulated in
3 *Schlup v. Delo*, 513 U.S. 298 (1995). After reviewing the proffered evidence again,
4 however, the court remains unconvinced of petitioner's actual innocence. That is, "in
5 light of all of the evidence," the "new evidence" does not establish that "it is more likely
6 than not that no reasonable juror would have found petitioner guilty beyond a
7 reasonable doubt." *Id.* at 327-28.

8 IT IS THEREFORE ORDERED that petitioner's "motion to alter or amend
9 judgment" (ECF No. 49) is DENIED.

10 IT IS FURTHER ORDERED that petitioner's motion for extension of time (ECF No.
11 53) is GRANTED *nunc pro tunc* as of April 27, 2018.

12 DATED this 28th day of February, 2019.

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15 LARRY R. HICKS
16 UNITED STATES DISTRICT JUDGE
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