Bellon v. Deal et a		Doc. 11
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3	UNITED STATES DISTRICT COURT	
4	DISTRICT OF NEVADA	
5	* * *	
6	ROBERT LINZY BELLON,	Case No. 3:18-cv-00294-MMD-WGC
7	Plaintiffs,	ORDER
8	V.	
9	DWAYNE DEAL, <i>et al.</i> ,	
10	Defendants.	
11		
12	Plaintiff Robert Linzy Bellon, an incarcerated person in the custody of the Nevada	
13	Department of Corrections, submitted a first amended civil rights complaint ("FAC") under	
14	42 U.S.C. § 1983. (ECF No. 5.) On March 4, 2019, this Court dismissed the FAC without	
15	leave to amend. (ECF No. 8 at 9.) The Court found that Plaintiff failed to raise any colorable	
16	due process, equal protection, and Eighth Amendment claims based on the miscalculation	
17	of his parole eligibility date. (Id. at 4–7.) The Court also found that Plaintiff's argument to	
18	have the Court recalculate his parole eligibility date by recalculating/applying Plaintiff's	
19	time-served in the county jail fell within the scope of habeas corpus because such a	
20	recalculation would change Plaintiff's sentence start date and duration of Plaintiff's	
21	sentence. (Id. at 7-8.) The Court directed Plaintiff to review NRS § 34.724 which directed	
22	a prisoner to file a state petition for writ of habeas corpus to challenge improper	
23	computations of time served pursuant to a judgment of conviction. (Id. at 8.) The Court	
24	dismissed the FAC without leave to amend and found that an appeal under 28 U.S.C. §	
25	1915(a)(3) would not be taken in good faith. (<i>Id.</i> at 9.) On January 7, 2020, Plaintiff filed a	
26	motion for relief under Federal Rule of Civil Procedure ("FRCP") 60(b)(1), (2), and (3).	
27	(ECF No. 10.)	
28	A party can seek reconsideration und	er FRCP 60(b). Fed. R. Civ. P. 60(b). Under

FRCP 60(b), the Court may relieve a party from a final judgment or order for: (1) mistake, 1 2 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; or (3) 3 misrepresentation. *Id.* "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was 4 5 manifestly unjust, or (3) if there is an intervening change in controlling law." Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for 6 7 reconsideration "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Carroll v. Nakatani, 8 9 342 F.3d 934, 945 (9th Cir. 2003).

10 In the motion for reconsideration, Plaintiff argues that this Court made a mistake, 11 misrepresented his arguments, and he has newly discovered evidence. (ECF No. 10 at 12 3.) Mainly, Plaintiff argues that his new evidence involves Judge Robert C. Jones's order 13 which is allegedly contrary to this Court's order. (*Id.*) Plaintiff asserts that he filed a federal 14 habeas corpus claim with Judge Jones, but Judge Jones held that his claim was not 15 cognizable in a federal habeas corpus action. (Id.) Plaintiff asserts that the Court 16 misinterpreted his arguments because he was seeking a parole hearing, not parole, and 17 continues to challenge the miscalculation of credits under the Nevada Revised Statutes. 18 (*Id.* at 3–5.)

19 On February 28, 2019, Plaintiff initiated a petition for writ of habeas corpus under 20 28 U.S.C. § 2241. (See Bellon v. Williams, 3:19-cv-00118-RCJ-WGC, ECF No. 1.) On 21 December 20, 2019, Judge Jones dismissed the petition. (ECF No. 20 at 1.) Judge Jones found that the claim that the respondents' failure to give Plaintiff credit toward the 20-year 22 23 parole eligibility period for time-served on another conviction was not cognizable in federal 24 habeas corpus because the claim would only result in an earlier parole board 25 consideration and not provide Plaintiff with an immediate or speedier release from custody. 26 (Id. at 2-3.) Alternatively, Judge Jones found that Plaintiff's petition did not make a 27 colorable claim for a federal constitutional violation because Plaintiff did not have a liberty 28 interest under NRS § 213.12135 in being considered for parole on a schedule that Plaintiff suggested. (*Id.* at 3.) Judge Jones's order also referenced the Nevada Supreme Court's
ruling denying Plaintiff's state habeas petition on the same claim. (*Id.*).

- 3 This Court now denies Plaintiff's motion for reconsideration under FRCP 60(b). First, Plaintiff makes the same arguments in his motion for reconsideration as he did in his 4 5 FAC. Second, the Court did not commit clear error in its original screening order and Judge Jones's order supports that. The original screening order addressed Plaintiff's 42 U.S.C. 6 7 § 1983 claims—due process, equal protection, and Eighth Amendment—and found that he failed to state colorable claims. (See ECF No. 8 at 5–7.) The original screening order 8 9 also directed Plaintiff to consider filing a state petition for writ of habeas corpus to 10 challenge the improper computations of time served. (Id. at 8.) Judge Jones's order 11 demonstrates that the Nevada Supreme Court rejected Plaintiff's interpretation of NRS § 213.12135 in his state habeas petition. (See 3:19-cv-00118-RCJ-WGC, ECF No. 20 at 3.) 12 13 As such, Plaintiff fails to present any arguments that entitle Plaintiff to relief under FRCP 14 60(b). The Court denies the motion for reconsideration.
- 15 For the foregoing reasons, it is ordered that the motion for reconsideration (ECF16 No. 10) is denied.
 - DATED THIS 6th day of April 2020.

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MIRANDA M. DU CHIEF UNITED STATES DISTRICT JUDGE

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