1 2 3 4 5 6 7 8 9 10 11 11	UNITED STATES I EASTERN DISTRICT JOEL THOMAS WORLEY, Petitioner, v. STATE OF WASHINGTON, Respondent.		
 13 14 15 16 17 18 19 20 	 BEFORE THE COURT is Petitioner's construed Motion for Reconsideration, ECF No. 5. This matter was submitted for consideration without oral argument. The Court has reviewed the record and is fully informed. For the reasons set forth below, the Motion for Reconsideration is DENIED. By Order filed May 20, 2019, the Court summarily dismissed Mr. Worley's <i>pro se</i> Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. ECF No. 3. Petitioner had not named a proper Respondent. <i>Rumsfeld v. Padilla</i>, 542 U.S. 426 (2004); <i>Stanley v. Cal. Supreme Court</i>, 21 F.3d 		

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359, 360 (9th Cir. 1994). He conceded that he did not fully exhaust his state court
 remedies before filing his petition. 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S.
 27 (2004); *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). Exhaustion is required.

Finally, the Court found Petitioner's assertion that the failure to prosecute him 4 5 by indictment, rather than by information, was legally frivolous. See Gaines v. State 6 of Washington, 277 U.S. 81, 86 (1928) ("Prosecution by information instead of by 7 indictment is provided for by the laws of Washington. This is not a violation of the 8 Federal Constitution."). In his construed Motion for Reconsideration, Petitioner 9 once again asks this Court to direct the State of Washington to present a "bill of Indictment" to justify the criminal legal process taken against him. ECF No. 5 at 1. 10 11 Petitioner's request is squarely foreclosed by the Supreme Court's decision in 12 Gaines.

A motion for reconsideration may be reviewed under either Federal Rule of 13 14 Civil Procedure 59(e) (motion to alter or amend a judgment) or Rule 60(b) (relief from judgment). Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 15 1993). "A district court may properly reconsider its decision if it '(1) is presented 16 17 with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." Smith 18 19 v. Clark Cnty. Sch. Dist., 727 F.3d 950, 955 (9th Cir. 2013) (quoting School Dist. No. 1J, 5 F.3d at 1263). "There may also be other, highly unusual, circumstances 20

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warranting reconsideration." *School Dist. No. 1J*, 5 F.3d at 1263. These standards
 apply in habeas corpus proceedings under 28 U.S.C. § 2254 to the extent they are
 not inconsistent with applicable federal statutory provisions and rules. *See Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005).

In this instance, Petitioner has not presented newly discovered evidence. *See School Dist. No. IJ*, 5 F.3d at 1263. He has not shown that the Court committed clear error or that the dismissal Order was manifestly unjust. Furthermore, there has been no intervening change in controlling law and there are no other circumstances warranting reconsideration. *Id.*

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ACCORDINGLY, IT IS ORDERED:

Petitioner's construed Motion for Reconsideration, ECF No. 5, is DENIED.
The Clerk of Court is directed to enter this Order and provide a copy to Petitioner.
The file shall remain closed. The Court certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c);
Fed. R. App. P. 22(b). A certificate of appealability is therefore DENIED. DATED June 11, 2019.

THOMAS O. RICE Chief United States District Judge

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