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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE
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10 CHRISTIAN BERRELLEZA-VERDUZCO,

11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA,

14 Respondent.
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Case No. 2:16-cv-01308RSL

ORDER DENYING MOTION
FOR RECONSIDERATION

16 This matter comes before the Court on petitioner's motion for reconsideration of the
17 denial of his motion for leave to file an out-of-time notice of appeal. Dkt. #22.

18 Petitioner Christian Berrelleza-Verduzco filed a "Motion under 28 U.S.C. § 2255 to
19 Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody," Dkt. #1, on August
20 17, 2016. This was denied by an order dated November 22, 2016. Dkt #10. Petitioner filed a
21 motion for reconsideration, Dkt. #12, which was also denied. Dkt. #15. Petitioner then filed a
22 motion for a certificate of appealability ("COA") under 28 U.S.C. § 2253(c), Dkt. #16, which
23 was denied by an order dated March 14, 2017. Dkt. #18. Finally, seventeen months later,
24 petitioner filed a motion for leave to file an out-of-time notice of appeal, in which he alleged that
25 his motion for a COA, Dkt. #16, ought to have been construed as a notice of appeal and
26 forwarded to the Ninth Circuit. Dkt. #19. This was denied on September 4, 2018. Dkt. #21.
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ORDER DENYING MOTION FOR
RECONSIDERATION - 1

1 In that order, the Court noted at the outset that it was not convinced that it had the power
2 to grant petitioner's requested relief. Dkt. #21 at 2. A district court does not possess the
3 authority to issue an order allowing an out-of-time appeal. *See United States v. Pearce*, 992 F.2d
4 1021, 1022 (9th Cir. 1993). However, the question did not arise, as the Court found that
5 petitioner's motion for a COA could not be construed as a notice of appeal in the first place,
6 even under the liberal construction rules afforded *pro se* civil rights plaintiffs. Dkt #21. The
7 Court also noted in a footnote that if petitioner had considered the motion a notice of appeal, one
8 would have expected some kind of activity in the intervening seventeen months. *Id* at 2. That
9 denial is the subject of petitioner's present motion for reconsideration, Dkt. #22.

10 Motions for reconsideration are disfavored and will be granted only upon a "showing of
11 manifest error in the prior ruling" or "new facts or legal authority which could not have been
12 brought to [the Court's] attention earlier with reasonable diligence." LCR 7(h)(1). Petitioner has
13 failed to meet this standard.

14 Petitioner reiterates that his motion for a COA included language that, "if liberally
15 construed[,] could [have led] a reasonable reader to judge the true nature of the pleadings as a
16 timely notice of appeal." Dkt. #22 at 1-2. The Court already rejected this argument on
17 September 4, 2018, Dkt. #21, and no new facts or legal authority are advanced in support
18 thereof. Petitioner also states that he never received the order denying his motion for a COA,
19 Dkt. #18, at the United States Penitentiary at Atwater, California. Dkt. #22 at 2. At some point,
20 he sought the assistance of the Federal Legal Research Center in obtaining a copy of the Court's
21 docket, and only then learned of the denial of his motion. *Id.* Petitioner therefore asserts that the
22 seventeen-month delay was rooted in his lack of knowledge concerning the denial of his motion
23 for a COA. *Id.* at 3.

24 Petitioner does not state when he finally enlisted the aid of the Federal Legal Research
25 Center, or indeed explain why he failed to do so many months earlier. *Id.* Regardless, however,
26 these are not new facts that could not have been brought to the Court's attention with the filing
27 of the original motion for leave to file an out-of-time notice of appeal, Dkt. #19. Petitioner was
28 clearly aware at the time of filing that motion, on August 6, 2018, that the deadline for filing a

1 notice of appeal had long since passed. *See* Fed. R. App. P. 4. Yet he did not anywhere attribute
2 that delay to any lack of knowledge concerning the denial of his motion for a COA, or any
3 failure on the part of the United States Penitentiary to deliver that order to him. Dkt. #19.
4 Petitioner has not shown any manifest error in the prior ruling, nor brought to light new facts or
5 authority that could not have been brought before the Court earlier with reasonable diligence.

6 In the order on September 4, 2018 denying his motion for a COA, petitioner was advised
7 by the Court that he could appeal that order to the Ninth Circuit if he so wished. He was
8 specifically encouraged to read Federal Appellate Rules 3 and 4 before doing so. The deadline
9 for filing that notice of appeal was September 18, 2018; i.e., fourteen days after the order was
10 issued. Fed. R. App. P. 4(b). Instead, petitioner elected to file a motion for reconsideration of the
11 order, twenty days after it was issued. A motion for reconsideration can only extend the time for
12 appeal if filed within the period during which an appeal could have been noticed from the
13 original order. *See United States v. Lefler*, 880 F.2d 233, 234 (9th Cir. 1989). Therefore, the
14 order denying his motion for leave to file an out-of-time notice of appeal can no longer be
15 appealed to the Ninth Circuit.

16 For the foregoing reasons, Petitioner's motion for reconsideration, Dkt. #22, is DENIED.

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18 DATED this 2nd day of October, 2018.

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21 Robert S. Lasnik
22 United States District Judge
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