

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Murray v. United States

Murray v. United States · No. 3:25-cv-00512-JES; 3:23-cr-759-JES · Decided April 1, 2025

SUMMARY

The United States District Court for the Southern District of California denied Calvin Valentine Murray’s motion for reconsideration of the court’s prior denial of his 28 U.S.C. § 2255 motion. The court held that the motion was untimely under the applicable 28-day deadline and identified no new facts, newly discovered evidence, clear error, or intervening change in law.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	James E. Simmons, Jr.
JURISDICTION	United States District Court for the Southern District of California
DECIDED	April 1, 2025
DOCKET	3:25-cv-00512-JES; 3:23-cr-759-JES
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner moved for reconsideration of the denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence.
STANDARD OF REVIEW	A motion for reconsideration under S.D. Cal. CivLR 7.1(i) requires the movant to identify new or different facts and circumstances not previously presented. A Rule 59(e) motion may be granted only upon newly discovered evidence, clear error, or an intervening change in controlling law.
PRECEDENTIAL VALUE	Unknown; district court order with no reported citation
PARTIES	Calvin Valentine Murray v. United States of America

TOPICS

- post-conviction relief
- motion for reconsideration
- ineffective assistance
- sentencing
- habeas corpus

PRACTICE AREAS

- Federal post-conviction relief
- Criminal procedure
- Motions for reconsideration

QUESTIONS PRESENTED

1. Whether Murray's renewed § 2255 motion should be construed as a motion for reconsideration.
2. Whether reconsideration was warranted under Southern District of California Civil Local Rule 7.1(i) or Federal Rule of Civil Procedure 59(e).

HOLDINGS

1. A pro se filing arguing that the court's prior order was incorrect may be construed as a motion for reconsideration of that order.
2. Reconsideration was not warranted because Murray filed outside the twenty-eight-day period and failed to identify new or different facts, newly discovered evidence, clear error, or an intervening change in law.

FACTUAL BACKGROUND

Murray sought collateral relief from his sentence under 28 U.S.C. § 2255, alleging ineffective assistance by attorney Gerardo Gonzalez. After the court denied his initial motion, Murray filed a renewed motion asserting the same grounds and arguing that the prior order was incorrect. The renewed motion was filed more than twenty-eight days after the January 31, 2025 order and did not identify new facts, newly discovered evidence, clear error, or an intervening change in law.

PROCEDURAL HISTORY

Murray filed an initial § 2255 motion alleging ineffective assistance of counsel. The court denied that motion on January 31, 2025. Murray then filed a renewed § 2255 motion, which the court construed as a motion for reconsideration; the court denied reconsideration because the motion was untimely and identified no qualifying basis for relief.

DISPOSITION

other

CASES CITED

- *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003)
- *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001)
- *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)
- *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)
- *Reeder v. Knapik*, No. 07-CV-362-L(LSP), 2007 WL 2088402, at *2 (S.D. Cal. July 18, 2007)
- *Campion v. Old Republic Home Protection Co., Inc.*, No. 09-CV-748-JMA(NLS), 2011 WL 1935967, at *2 (S.D. Cal. May 20, 2011)

OPINION

1 2 3 4 5 6 7 8 9 UNITED STATES DISTRICT COURT 10 SOUTHERN DISTRICT OF
CALIFORNIA 11 12 CALVIN VALENTINE MURRAY, Case No.: 3:25-cv-00512-JES 3:23-cr-
759-JES 13 Petitioner, 14 v. ORDER DENYING PETITIONER’S MOTION FOR 15 UNITED
STATES OF AMERICA, RECONSIDERATION 16 Respondent. 17 [ECF Nos. 1, 58] 18 19 20 21
Before the Court is Calvin Valentine Murray’s (“Petitioner”) motion to vacate, set 22 aside, or
correct his sentence pursuant to 28 U.S.C. § 2255 (“Motion”), alleging ineffective 23 assistance of
counsel by his attorney, Gerardo Gonzalez.

ECF No. 581. 24 / / / 25 26 27 1 In Petitioner’s civil case, 3:25-cv-00512-JES, Petitioner’s § 2255
motion is ECF No. 1. In the underlying criminal case, 3:23-cr-759-JES, the same motion is filed as
ECF No. 58. The Court hereinafter cites only 28 1 I. PROCEDURAL HISTORY 2 On June 10,
2024, Petitioner Calvin Murray (“Petitioner”) filed a motion to 3 vacate, set aside, or correct his
sentence pursuant to 28 U.S.C. § 2255, alleging 4 ineffective assistance of counsel by his attorney,
Gerardo Gonzalez.

ECF No. 38. On 5 January 31, 2025, the Court issued an Order denying Petitioner’s motion to
vacate, set 6 aside or correct his sentence under 28 U.S.C. § 2255. ECF No. 57. On March 5, 7
2025, Petitioner filed a renewed motion to vacate, set aside, or correct his sentence 8 pursuant to
28 U.S.C. § 2255 (ECF No. 58) arguing the same grounds as his original 9 motion and arguing
that the Court’s Order is wrong, which the Court construes as a 10 Motion for Reconsideration of
its January 31, 2025, Order.

See *Bernhardt v. Los 11 Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003) (“Courts have a duty
to construe pro 12 se pleadings liberally, including pro se motions as well as complaints.”). 13 II.
MOTION FOR RECONSIDERATION 14 Petitioner asks this Court to reconsider its January 31,
2025, Order. ECF No. 15 58. Southern District of California Civil Local Rule 7.1(i) permits
motions for 16 reconsideration “[w]hensoever any motion or any application or petition for any
order or 17 other relief has been made to any judge ... has been refused in whole or in part.” S.D.

18 Cal. CivLR 7.1(i). Local Rule 7.1(i)(2) permits motions for reconsideration within 19 “twenty-
eight (28) days of the entry of the ruling, order or judgment sought to be 20 reconsidered.” S.D.
Cal. CivLR 7.1(i)(2).

However, the party seeking reconsideration 21 must show “what new or different facts and
circumstances are claimed to exist which 22 did not exist, or were not shown, upon such prior
application.” *Id.* 23 A motion for reconsideration may also be treated as a motion to alter or amend
24 a judgment under Rule 59(e) if it is filed within twenty-eight days of entry of judgment.

25 See *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898-99 26 (9th Cir.
2001). But a district court may grant a Rule 59(e) motion only if it “is presented 27 with newly
discovered evidence, committed clear error, or if there is an intervening 28 Reconsideration is an

“extraordinary remedy, to be used sparingly in the interests of 4 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 429 F.3d 877, 890 (9th Cir.

2000). As such, a Rule 59(e) motion “should not be granted, 5 absent highly unusual circumstances.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 6 (9th Cir. 2011); see also *Reeder vy. Knapik*, No. 07-CV-362-L(LSP), 2007 WL 2088402, 5 at *2 (S.D. Cal. July 18, 2007) (“A motion to reconsider is not another opportunity for 9 the losing party to make its strongest case, reassert arguments, or revamp 9 previously unmeritorious arguments.”); *Campion v. Old Republic Home Protection 10 Co., Inc.*, No. 09-CV-748-JMA(NLS), 2011 WL 1935967, at *2 (S.D.

Cal. May 20, 2011) (“[R]econsideration may not be used to get a second bite at the apple.”). Petitioner filed this renewed motion on March 3, 2025, 31 days after the 3 Court’s January 31, 2025, Order. Petitioner’s motion offers no new or different facts, 4 points to no newly discovered evidence, identifies no clear error, and cites to no 15 intervening change in law that alters the Court’s initial conclusion.

Further, Petitioner 16 filed this renewed motion after 28 days from the Court’s January 31, 2025, Order. 7 Accordingly, Petitioner’s Motion for Reconsideration (ECF No. 58) is DENIED. 18 IT IS SO ORDERED. 19 Dated: April 1, 2025 Sun,. 20 Honorable James E. Sunmons Jr. 1 United States District Judge 22 23 24 25 26 27 28