

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.

OPINION

Murray v. United States

PER CURIAM.

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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 Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003) ("Courts have a duty to construe pro 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]henver 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*, 4 229 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 v. 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 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