

SEP 04 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT P. SMITH, III,

Petitioner - Appellant,

v.

JAMES ROWLAND; et al.,

Respondents - Appellees.

No. 05-17103

D.C. No. CV-97-06204-REC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, District Judge, Presiding

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

California state prisoner Robert P. Smith, III appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition for failure to follow a court order and from the district court's denial of his motion to reconsider. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 2253. We review for an abuse of discretion. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002); *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir. 2004). We affirm.

The district court did not abuse its discretion when it dismissed Smith's § 2254 habeas petition with prejudice because he failed to comply with the court's order to file a second amended habeas petition. *See Pagtalunan*, 291 F.3d at 641-44 (setting forth five factors to be weighed in determining whether to dismiss a claim for failure to comply with a court order). The record indicates that Smith had many opportunities to comply, but did not do so even after being warned that failure to submit an amended petition would result in dismissal. *See id.*

We also conclude that the district court did not abuse its discretion by denying Smith's motion for reconsideration because the motion provided no legitimate basis for reconsideration. *See Fed. R. Civ. P. 60(b).*

To the extent that Smith raises additional uncertified issues, we construe his arguments as a motion to expand the certificate of appealability, and we deny the motion. *See 9th Cir. R. 22-1(e); see also Hiivala v. Wood*, 195 F.3d 1098, 1104 (9th Cir. 1999) (per curiam).

All pending motions are denied.

AFFIRMED.