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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICK KEVEN MCKEEVER,

Petitioner - Appellant,

v.

THOMAS M. HORNUNG,

Respondent - Appellee.

No. 05-56748

D.C. No. CV-02-01054-CJC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted February 6, 2009
Pasadena, California

Before: HALL, SILVERMAN and CALLAHAN, Circuit Judges.

Patrick McKeever appeals the district court's denial of his petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254 (2000). Because the parties are familiar with the facts, we only repeat them as necessary to understand our disposition. We have jurisdiction pursuant to 28 U.S.C. § 2253. We reverse.

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

The sole issue in this case is whether the district court properly refused to consider a claim which McKeever voluntarily withdrew and later attempted to reinstate in his objections to the magistrate judge's Report and Recommendations. The district court was required to conduct a *de novo* review of those portions of the magistrate's report to which McKeever objected and had discretion to consider an issue newly-raised in those objections. *See* 28 U.S.C. § 636(b)(1)(C); *Brown v. Roe*, 279 F.3d 742, 744-45 (9th Cir. 2002).

Although the district court said that it had conducted a *de novo* review of McKeever's objections and implied that it had looked into McKeever's attempted reinstatement of Ground Three at least closely enough to confirm the earlier withdrawal, this Court has held that the exercise of discretion requires more. *See Brown*, 279 F.3d at 745 (finding the bare assertion that the court had conducted a *de novo* review insufficient); *United States v. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000) (emphasizing that a court must do more than "summarily accept[] or deny[] the motion"). Instead, the district court should have "specifically addressed" the newly-raised objection and provided reasons for its rejection. *See Brown*, 279 F.3d at 745.

Accordingly, we REVERSE and REMAND so that the district court may exercise its discretion regarding McKeever's attempt to reinstate Ground Three of his habeas petition.