

OCT 28 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAKE HENDERSON,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DERRAL G. ADAMS, et al.,</p> <p>Respondents - Appellees.</p>
---

No. 08-56302

D.C. No. 3:06-cv-01554-JM

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Jeffrey T. Miller, District Judge, Presiding

Submitted October 19, 2010\*\*

Before: O’SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Jake Henderson appeals from the district court’s order denying his Federal Rule of Civil Procedure 59 motion for reconsideration challenging the dismissal of his 28 U.S.C. § 2254 petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

---

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

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

Henderson contends that the district abused its discretion by denying his motion, which we construe as a motion for relief from final judgment based on Federal Rule of Civil Procedure 60(b). *See Straw v. Bowen*, 866 F.2d 1167, 1171-72 (9th Cir. 1989). The district court did not abuse its discretion when it denied Henderson’s motion because his almost two-year delay before filing the motion was not reasonable. *See Fed. R. Civ. P. 60(c)* (“A motion under Rule 60(b) must be made within a reasonable time . . . .”); *In re Hammer*, 940 F.2d 524, 526 (9th Cir. 1991) (holding that it was not an abuse of discretion to find an unexcused two-year delay unreasonable).

**AFFIRMED.**