

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

DANNY HOWELL,)	
)	
Petitioner,)	
)	
vs.)	NO. 1:09-CV-168
)	
SUPERINTENDENT, WABASH)	
VALLEY CORRECTIONAL FACILITY,)	
)	
Respondent.)	

OPINION AND ORDER

This matter is before the Court on the motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) filed by Petitioner Danny Howell, asking the Court to grant his petition for writ of habeas corpus. For the reasons set forth below, the Court **DENIES** the Petitioner's motion to alter or amend judgment.

Howell, a prisoner confined at the Wabash Valley Correctional Facility, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. section 2254, challenging his convictions in the Wells Circuit Court for felony child molestation and sexual misconduct for a minor for which he received sentences totaling seventy years. On April 26, 2010, the court denied Howell's petition for writ of habeas corpus. On April 30, 2010, he filed his motion to alter or amend judgment, and on May 20, 2010, he filed his notice of appeal.

Where a party has filed a notice of appeal, a district court may deny, but not grant his motion for relief from judgment. *United States v. Cronic*, 466 U.S. 648, 667 n. 42 (1984). "*Cronic* involved

a motion for a new trial under Fed. R. Crim. P. 33, but the principle is general. A district court disposed to alter the judgment from which an appeal has been taken must alert the court of appeals, which may elect to remand the case for that purpose. The district court may not alter the judgment unless the court of appeals grants leave." *Kusay v. United States*, 62 F.3d 192, 195 (7th Cir. 1995)(citations omitted).

For the reasons set forth above, the petitioner's motion to alter or amend judgment (DE 25) is **DENIED**.

DATED: June 22, 2010

/s/ RUDY LOZANO, Judge
United State District Court