

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LINH KY DUONG, #25398-013	§	
VS.	§	CIVIL ACTION NO. 4:10cv300
UNITED STATES OF AMERICA	§	CRIM. ACTION NO. 4:07cr2(1)

MEMORANDUM OPINION AND ORDER

Movant filed a letter following the Final Judgment in this case, which was construed as a Motion for Reconsideration. If a motion for relief from judgment is filed within twenty-eight (28) days of final judgment, Movant's motion should be filed as a motion under Rule 59 rather than Rule 60. Fed. R. Civ. P. 59(e); *Ford v. Elsbury*, 32 F.3d 931, 937 (5th Cir. 1994) (citing *Lavespere v. Niagara Mach. & Tool Works, Inc.* 910 F.2d 167, 173 (5th Cir. 1990)). If the motion is served after that time, it falls under Rule 60(b). Fed. R. Civ. P. 60(b). Movant's case was closed on April 24, 2013, and the motion was filed May 20, 2013; thus, Movant's motion is properly filed under Rule 59.

In his construed Rule 59 motion, Movant complains that he was not timely notified of the Report and Recommendation in his case because he was being moved to another facility. An acknowledgment of receipt, dated May 7, 2013, states that Movant refused or was unable to sign the acknowledgment of receipt. He now asks that he be granted an extension of time in which to file objections. However, Movant's case has already been closed. At this point, Movant may submit a motion for reconsideration outlining his objections in a Rule 60(b) motion. He must show that a miscarriage of justice will occur if his Rule 60(b) motion is denied. Accordingly, it is

ORDERED that Movant's Construed Motion for Reconsideration (docket entry #21) is **DENIED** to the extent he seeks relief from judgment. However, if Movant wishes to file a Rule 60(b) motion, he should submit it within a reasonable period of time. Fed. R. Civ. P. 60(c)(1). All motions not previously ruled upon are **DENIED**.

So **ORDERED** and **SIGNED** this 4 day of **June, 2013**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

Ron Clark, United States District Judge