

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ROBERT MARSHALL,)
)
Petitioner,)
)
v.) CASE NO. 2:16-CV-477-WKW
) [WO]
UNITED STATES OF AMERICA,)
)
Respondent.)

ORDER

Before the court is Petitioner’s motion to alter or amend judgment. (Doc. # 48.) The motion is due to be denied.

The only grounds for granting a Rule 59(e) motion in the Eleventh Circuit are newly discovered evidence or manifest errors of law or fact. *Metlife Life & Annuity Co. of Conn. v. Akpele*, 886 F.3d 998, 1008 (11th Cir. 2018) (citing *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. (2007))). “A Rule 59(e) motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to entry of judgment.” *Arthur*, 500 F.3d at 1343 (alterations and citation omitted).

Petitioner has presented no grounds entitling him to relief under Rule 59(e). He also has not submitted newly discovered evidence or shown the need to correct

a clear error that resulted in manifest injustice. Accordingly, Petitioner's motion (Doc. # 48) is due to be denied.

Petitioner also requests a certificate of appealability ("CoA"). Accordingly, Petitioner's Rule 59(e) motion is construed as containing a motion for a certificate of appealability for both the final judgment and Rule 59(e) motion. *See Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013) (requiring a CoA for an appeal from a district court order denying a petitioner's Rule 59(e) motion challenging a prior denial of federal habeas relief (citing 28 U.S.C. § 2253(c)(1))).

To merit a CoA, Petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). He has failed to make this required showing for the issuance of a CoA. Therefore, Petitioner is not entitled to a CoA from the denial of his § 2255 motion or his Rule 59(e) motion.

Accordingly, it is ORDERED as follows:

- (1) Petitioner's motion to alter judgment (Doc. # 48) is DENIED; and
- (2) Petitioner's motion for a CoA (Doc. # 48) is DENIED, and Petitioner is DENIED a CoA from the Final Judgment (Doc. # 45) and this Order denying Petitioner's Rule 59(e) motion to alter or amend judgment.

DONE this 28th day of August, 2018.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE