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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Anthony Marshall Spears,

10 Petitioner,

11 v.

12 Ryan Thornell, et al.,

13 Respondents.  
14

No. CV-00-01051-PHX-SMM

**ORDER**

DEATH PENALTY CASE

15 Before the Court is Petitioner Anthony Marshall Spear’s Motion to Alter or Amend  
16 the Judgment Pursuant to Rule 59(e). (Doc. 204.) Spears seeks reconsideration of the  
17 Court’s order denying his remanded habeas claims, specifically Claim 15(c) and 15(d), and  
18 the Court’s denial of his request to stay these proceedings under *Rhines v. Weber*, 544 U.S.  
19 269 (2005). (*Id.*) Respondents oppose the motion (Doc. 207), which the Court will deny  
20 for the reasons that follow.

21 **A. Applicable Law**

22 A motion to alter or amend judgment under Rule 59(e) is in essence a motion for  
23 reconsideration. Rule 59(e) offers an “extraordinary remedy, to be used sparingly in the  
24 interests of finality and conservation of judicial resources.” *Kona Enter., Inc. v. Est. of*  
25 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *see also Rishor v. Ferguson*, 822 F.3d 482, 491–  
26 92 (9th Cir. 2016). A motion brought pursuant to Rule 59(e) should only be granted in  
27 “highly unusual circumstances.” *Id.*; *see also 389 Orange Street Partners v. Arnold*, 179  
28 F.3d 656, 665 (9th Cir. 1999). Reconsideration is appropriate only if the court is presented

1 with newly discovered evidence, if there is an intervening change in controlling law, or if  
2 the court committed clear error. *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014);  
3 *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (per curiam); see *School Dist.*  
4 *No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

5 A motion for reconsideration is not a forum for the moving party to make new  
6 arguments not raised in its original briefs. *Nw. Acceptance Corp. v. Lynnwood Equip., Inc.*,  
7 841 F.2d 918, 925–26 (9th Cir. 1988); *Zimmerman v. City of Oakland*, 255 F.3d 734, 740  
8 (9th Cir. 2001) (district court did not abuse its discretion by disregarding legal arguments  
9 and facts previously available but raised for the first time under Rule 59(e)). Nor is it  
10 appropriate for a party to ask the court to “rethink what the court ha[s] already thought  
11 through.” *United States v. Rezzonico*, 32 F.Supp.2d 1112, 1116 (D. Ariz. 1998). “A party  
12 seeking reconsideration must show more than a disagreement with the Court’s decision,  
13 and recapitulation of the cases and arguments considered by the court before rendering its  
14 original decision fails to carry the moving party’s burden.” *United States v. Westlands*  
15 *Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001) (quotations omitted); see, e.g.,  
16 *Gulbrandson v. Shinn*, No. CV-22-00276-PHX-DLR, 2022 WL 1289303, at \*1 (D. Ariz.  
17 Apr. 29, 2022).

18 Under the Rules of this District, motions to reconsider are granted only if the movant  
19 makes a showing of “manifest error or new facts or legal authority that could not have been  
20 brought to [the Court’s] attention earlier with reasonable diligence.” LRCiv. 7.2(g). A  
21 motion for reconsideration must “point out with specificity the matters that the movant  
22 believes were overlooked or misapprehended by the Court” as well as “any new matters  
23 being brought to the Court’s attention for the first time and the reasons they were not  
24 presented earlier.” *Id.* Motions for reconsideration must not “repeat any oral or written  
25 argument made by the movant in support of . . . the motion that resulted in the Order.” *Id.*

26 **B. Discussion**

27 Spears asserts that the Court the committed “manifest errors of fact and law,”  
28 including erroneously finding that Claims 15(c) and (d) remained exhausted and were not

1 fundamentally altered by evidence presented in these habeas proceedings. (Doc. 204 at 3.)  
2 According to Spears, in denying a *Rhines* stay because his petition contained only  
3 exhausted claims and therefore was not mixed, this Court “misapprehend[ed] long-  
4 standing principles of federal habeas law and ignore[d] the full impact of the state-court  
5 proceedings.” (*Id.*) He points to the fact that the state court has allowed him to file an  
6 amended PCR petition raising the same claims under the “good cause” standard of Rule  
7 32.9 of the Arizona Rules of Criminal Procedure. (*Id.*; see Doc. 202, Ex. 1.)

8 Spears argues that comity requires that “when a state prisoner alleges a federal  
9 violation, the state courts should have the first opportunity to review the claim. . . .” (Doc.  
10 204 at 3) (citing *Rose v. Lundy*, 455 U.S. 509, 515, 518 (1982); *O’Sullivan v. Boerckel*,  
11 526 U.S. 838 (1999)). The Court agrees. The state courts did have the first opportunity to  
12 review Claims 15(c) and (d). See *Shinn v. Ramirez*, 596 U.S. 366, 367 (2022) (“federal-  
13 state comity” is “promoted by affording States ‘an *initial* opportunity to pass upon and  
14 correct alleged violations of prisoners’ federal rights.”) (quoting *Duckworth v. Serrano*,  
15 454 U.S. 1, 3 (1981) (*per curiam*)) (emphasis added).

16 In the pending motion, Spears repeats his argument that Claims 15(c) and (d) have  
17 been fundamentally altered by the new evidence. In making this argument, however, Spears  
18 is simply asking the Court to rethink what it has already thought through. *Rezzonico*, 32  
19 F.Supp.2d at 1116; see LRCiv. 7.2(g). Spears disagrees with the Court’s conclusion, but  
20 that is an insufficient basis for seeking reconsideration under Rule 59(e). *Westlands Water*  
21 *Dist.*, 134 F.Supp.2d at 1131.

22 The fact that a state court has allowed Spears to file an amended PCR petition does  
23 not affect this Court’s determination that Claims 15(c) and (d) have not been fundamentally  
24 altered under *Dickens v. Ryan*, 740 F.3d 1302 (9th Cir. 2014) (en banc), and its progeny.  
25 Spears does not argue that the fundamentally-altered standard applied by federal habeas  
26 courts bears any relation to the state court’s Rule 32.9 “good cause” standard for amending  
27 a PCR petition, or that the state court’s decision to allow amendment here constituted a  
28 determination that the claims were “new” and unexhausted.

1 In his reply brief, Spears cites *Cassett v. Stewart*, 406 F.3d 614, 623 (9th Cir. 2005),  
2 for the proposition that Claims 15(c) and (d) “cannot be exhausted if the state courts are  
3 now considering them on the merits.” (Doc. 207 at 3.) *Cassett* is inapposite. There the  
4 Ninth Circuit addressed the district court’s determination that a claim was procedurally  
5 defaulted. The court reversed and remanded because the district court had made no findings  
6 as to whether the claim at issue was of sufficient constitutional magnitude to require a  
7 personal waiver under state procedural rules and whether such a waiver had been made.  
8 406 F.3d at 622. The Ninth Circuit recognized that such an assessment “often involves a  
9 fact-intensive inquiry,” which the “Arizona state courts are better suited to make. . . .” *Id.*  
10 The court concluded, therefore, that the claim was not procedurally defaulted because it  
11 was “not clear that the Arizona courts would hold [the claim] barred. . . .” *Id.* at 623.

12 By contrast, in Spears’s case, as explained above, this Court’s determination that  
13 Claims 15(c) and (d) have not been fundamentally altered from the claims previously raised  
14 and denied on the merits in state court, and therefore remain exhausted, is independent of  
15 any factual or legal findings arising from Spears’s amended PCR petition.

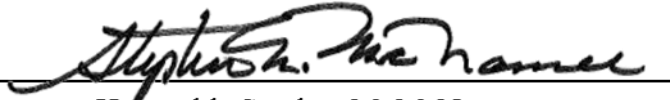
16 **C. Conclusion**

17 Spears has failed to establish the “highly unusual circumstances” that would  
18 necessitate granting a motion under Rule 59(e) based on manifest error by the Court. *See*  
19 *Wood*, 759 F.3d at 1121. His motion to alter or amend is therefore denied.

20 Accordingly,

21 **IT IS HEREBY ORDERED** Spears’s motion to alter or amend the judgment  
22 pursuant to Rule 59(e) (Doc. 204) is **DENIED**.

23 Dated this 13th day of May, 2024.

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25   
26 Honorable Stephen M. McNamee  
27 Senior United States District Judge  
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