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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Joseph Rudolph Wood, III,

No. CV-98-0053-TUC-JGZ

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Petitioner,

Death Penalty Case

11

vs.

Order

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Charles L. Ryan, et al.,

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Respondents.

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Petitioner Joseph Wood is an Arizona death row inmate. His execution is scheduled for July 23, 2014. On Thursday, July 17, 2014, Petitioner filed a motion seeking relief under Rule 60(b)(6) and a motion for a stay of execution. (Docs. 116, 117.) Briefing was completed Saturday, July 19. On Sunday, July 20, the Court denied the motions. (Doc. 124.)

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Now before the Court is Petitioner’s motion, filed Monday, July 21, asking the Court to alter or amend its judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. (Doc. 125.) In the alternative, Petitioner seeks a certificate of appealability with respect to the Court’s denial of his Rule 60(b)(6) motion. (*Id.*)

1 **DISCUSSION**

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3 A motion to alter or amend judgment under Rule 59(e) of the Federal Rules of
4 Civil Procedure is in essence a motion for reconsideration. Rule 59(e) offers an
5 “extraordinary remedy, to be used sparingly in the interests of finality and conservation
6 of judicial resources.” *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.
7 2000). The Ninth Circuit has consistently held that a motion brought pursuant to Rule
8 59(e) should only be granted in “highly unusual circumstances.” *Id.*; see *389 Orange*
9 *Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

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12 Reconsideration is appropriate only if the court is presented with newly
13 discovered evidence, if there is an intervening change in controlling law, or if the court
14 committed clear error. *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (per
15 curiam); see *School Dist. No. 1J, Multnomah County, Or. v. AcandS, Inc.*, 5 F.3d 1255,
16 1263 (9th Cir. 1993). A motion for reconsideration is not a forum for the moving party
17 to make new arguments not raised in its original briefs. *Northwest Acceptance Corp. v.*
18 *Lynnwood Equipment, Inc.*, 841 F.2d 918, 925–26 (9th Cir. 1988). Nor is it the time to
19 ask the court to “rethink what it has already thought through.” *United States v.*
20 *Rezzonico*, 32 F.Supp.2d 1112, 1116 (D. Ariz. 1998).

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24 Petitioner argues that the Court erred in finding that his claim of ineffectiveness
25 of sentencing counsel (Claim D) constituted an unauthorized second or successive
26 petition under 28 U.S.C. § 2244(b)(3). (Doc. 124 at 20–22.) Petitioner asserts that this
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1 Court's denial of funds for neurological testing prevented him from presenting what is a
2 fundamentally altered, and therefore unexhausted and procedurally defaulted, claim of
3 ineffective assistance of counsel. (Doc. 125 at 3–4.) He characterizes this argument as
4 an “attack on the integrity of his federal habeas corpus proceedings.” (Doc. 125 at 2.)
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6 While Petitioner is asking the Court “to rethink what it has already thought
7 through,” the Court will briefly address Petitioner’s argument.
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9 In Claim 10(C)(3)(a) of his habeas petition, Petitioner alleged that trial counsel
10 performed ineffectively at sentencing by failing to adequately prepare and present
11 evidence of Petitioner’s diminished capacity, including personality changes following
12 several serious head injuries, and his social history, including his family history of
13 alcoholism and mental illness. Petitioner also alleged that counsel performed
14 ineffectively by failing to obtain and present an in-depth neurological evaluation. (Doc.
15 24 at 136–42.)
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19 The Court found that Claim 10(C)(3)(a) had been properly exhausted in
20 Petitioner’s PCR proceedings in state court. (Doc. 63 at 37.) The Court considered the
21 claim on the merits and denied relief. (Doc. 79 and 45–62.) The Ninth Circuit Court of
22 Appeals affirmed. *Wood v. Ryan*, 693 F.3d 1104, 1120 (9th Cir. 2012). The Court of
23 Appeals also affirmed this Court’s denial of evidentiary development, explaining that
24 “Wood is not entitled to an evidentiary hearing or additional discovery in federal court
25 because this ineffective assistance of counsel claim is governed by 28 U.S.C. §
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1 2254(d)(1), as it was adjudicated on the merits in the PCR proceedings. Review of such
2 claims ‘is limited to the record that was before the state court that adjudicated the claim
3 on the merits.’” *Id.* at 1122 (quoting *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398
4 (2011)).
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6 In seeking to reopen judgment with respect to allegations of ineffective
7 assistance of sentencing counsel, Petitioner is advancing a habeas claim. Therefore, the
8 motion is a second or successive petition. This is true whether he is raising a new,
9 fundamentally altered claim or supporting a previous claim with new evidence. *See*
10 *Gonzales v. Crosby*, 535 U.S. 524, 531–32 (2005). “It makes no difference that the
11 motion itself does not attack the district court’s substantive analysis of those claims but,
12 instead, purports to raise a defect in the integrity of the habeas proceedings. . . .” *Post v.*
13 *Bradshaw*, 422 F.3d 419, 424 (6th Cir. 2005).
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17 Accordingly,

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19 **IT IS HEREBY ORDERED** that Petitioner’s motion to alter or amend
20 judgment is denied. (Doc. 125.)

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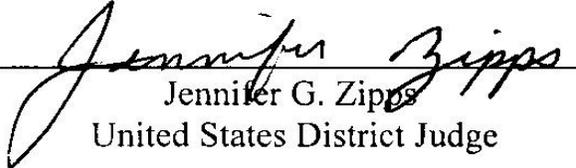
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IT IS FURTHER ORDERED that to the extent a certificate of appealability is needed, the Court finds that reasonable jurists could debate its denial of Petitioner’s Rule 60(b)(6) motion. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, the Court grants a certificate of appealability on this issue.

Dated this 21st day of July, 2014.


Jennifer G. Zipp
United States District Judge