IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH A. SHERMAN,

Petitioner,

vs.

EDMUND G. BROWN, JR., Attorney General of the State of California,

Respondent.

No. 2:06-cv-00911-JKS

ORDER
[Re: Motion at Docket No. 47]

Petitioner Joseph A. Sherman, a former county prisoner, proceeding *pro se* in this proceeding, has timely moved this Court under Federal Rule of Civil Procedure 59(e) to alter or amend the decision and judgment of this Court entered on July 22, 2009.[1]

This Court may grant relief under Rule 59(e) under limited circumstances: an intervening change of controlling authority, new evidence has surfaced, or the previous disposition was clearly erroneous and, if uncorrected, would work a manifest injustice.[2] In his motion Sherman does not put forth any new evidence, nor has there been an intervening change in controlling authority. Sherman's arguments are essentially a rehash of the arguments he presented in his petition. The Court finds those arguments to be as unpersuasive as re-presented in the instant motion as they were initially. The previous disposition by this Court was not clearly erroneous.

IT IS THEREFORE ORDERED THAT the Motion for Relief from Judgment at Docket No. 47 is **DENIED**.

[1] A motion to reconsider is treated as a motion under Rule 59(e) if it is filed within ten days after entry of judgment. *American Ironworks & Erectors, Inc. v. North Am. Const. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001).

[2] *See Circuit City Stores v. Mantor*, 417 F.3d 1060, 1064 (9th Cir. 2005); *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). *See generally* 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedures Civil § 2810.1 (2d ed. 2009).

IT IS FURTHER ORDERED THAT the Court declines to issue a Certificate of Appealability.[3] Any further request for a Certificate of Appealability must be addressed to the Court of Appeals. *See* Fed. R. App. P. 22(b); Ninth Circuit R. 22-1.

Dated: August 12, 2009.

/s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge

[3] 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (a COA should be granted where the applicant has made "a substantial showing of the denial of a constitutional right," *i.e.,* when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further") (internal quotation marks and citations omitted).