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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS FRANKLIN WHEELOCK,

Petitioner,

No. C 05-3878 PJH

v.

**ORDER DENYING MOTION FOR
RULE 59 RELIEF**

SCOTT M. KERNAN, Warden,

Respondent.

On February 2, 2012, this court denied petitioner Thomas Wheelock's ("Wheelock") petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Wheelock now moves the court for reconsideration of its order under Federal Rule of Civil Procedure 59. Having considered Wheelock's motion and the relevant authorities, the court DENIES the motion.

A district court has considerable discretion when considering a motion to alter and/or amend a judgment under Rule 59(e). *McDowell v. Calderon*, 197 F.3d 1253, 1254 n.1 (9th Cir. 1999). A Rule 59(e) motion should not be granted, absent highly unusual circumstances, unless: 1) the motion is necessary to correct manifest errors of law or fact upon which a judgment is based; 2) the moving party presents newly discovered or previously unavailable evidence; 3) the motion is necessary to prevent manifest injustice; or 4) there is an intervening change in the controlling law. *Turner v. Burlington Northern Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003); *see also McDowell*, 197 F.3d at 1255 (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir.1999)).

Wheelock moves for reconsideration as to three issues: (1) the trial court's dismissal of a juror during deliberations violated his constitutional right to due process and

1 to a trial by a fair and impartial jury and also violated his equal protection rights;
2 (2) the prosecution's failure to obtain and preserve videotape evidence violated his due
3 process rights; and (3) the Alameda County grand jury and forepersons selection
4 procedures violated his due process and his equal protection rights.

5 As for all three issues, Wheelock offers no new evidence, nor does he demonstrate
6 any error in law or fact upon which the judgment was based. Instead, he simply reasserts
7 the very arguments that this court already considered and rejected in his original petition.
8 The court has thoroughly reviewed, considered, and addressed the repetitive arguments,
9 and finds no reason to reconsider its February 2, 2012 decision.

10 **CONCLUSION**

11 Accordingly, Wheelock's Rule 59 motion is DENIED.

12 **IT IS SO ORDERED.**

13 Dated: March 9, 2012



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15 PHYLLIS J. HAMILTON
16 United States District Judge
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