

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 08-cv-00961-REB-MJW

JOHN J. McCARTHY,

Applicant,

v.

WARDEN USP FLORENCE,

Respondent.

**ORDER DENYING APPLICANT'S RULE 59(E) AND 60(B) MOTION
OR IN THE ALTERNATIVE MOTION FOR RECONSIDERATION**

Blackburn, J.

The matter before me is **Applicant's Rule 59(e) and 60(b) Motion or in the Alternative Motion for Reconsideration** [#63], filed June 3, 2010. I deny the motion.

Because applicant's motion was filed within 28 days of the entry of judgment, it is properly considered under Fed.R.Civ.P. 59(e). However, the bases for granting a motion under Rule 59(e) are limited:

Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.

Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (citations omitted).

None of these circumstances pertains here. Applicant's motion both rehashes arguments I have already rejected and presents entirely novel arguments heretofore not advanced in support of the 2241 application. None of these arguments provides proper grounds for relief under Rule 59(e). Accordingly, the motion must be denied.

THEREFORE, IT IS ORDERED that **Applicant's Rule 59(e) and 60(b) Motion or in the Alternative Motion for Reconsideration** [#63], filed June 3, 2010, is **DENIED**.

Dated July 28, 2010, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge