

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02179-ZLW

CLAUDIA (CLAUDE) E. BURTON III,

Applicant,

v.

ARISTEDES ZAVARAS, Executive Director C.D.O.C., and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

FEB 26 2009

GREGORY C. LANGHAM  
CLERK

## ORDER

Applicant Claudia (Claude) E. Burton III filed a "Motion to Alter/Amend Order Denying Motion to Reconsider Pursuant to Fed. R. Civ. P. 59(e)," on February 9, 2009. In the Motion to Alter/Amend, Applicant asks that the Court review and consider the two separate Addendums that she filed subsequent to the Objection and Petition for Redress, which she filed on January 15, 2009. Applicant further asks the Court to reconsider the denial of her Objection and Petition for Redress. The Court construed the Objection and Petition for Redress as a Motion to Reconsider filed pursuant to Fed. R. Civ. P. 59(e) and denied the Motion on February 2, 2009.

Upon review of the February 9, 2009, Motion to Alter/Amend, the Court finds that Applicant fails to demonstrate some reason why the Court should vacate the February 2, 2009, Order that denies Applicant's Motion to Reconsider. Applicant asserts nothing in either the Motion to Alter/Amend or the Addendum filed on January 28, 2009, that would merit the reconsideration of the January 7, 2009, Order of Dismissal, in which the Court found that Applicant's claims are procedurally barred in a 28 U.S.C. § 2254

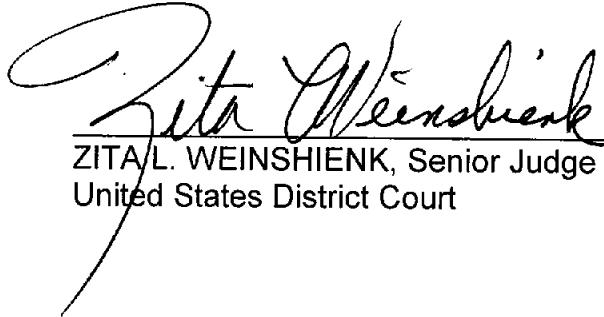
action. In the Addendum, Applicant filed on January 29, 2009, she does assert actual innocence. A claim of actual innocence may warrant equitable tolling in a federal habeas action. **See Gibson v. Klinger**, 232 F.3d 799, 808 (10<sup>th</sup> Cir. 2000). To establish actual innocence, however, Applicant must “support [her] allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” **Schlup v. Delo**, 513 U.S. 298, 324 (1995). Applicant fails to present any new reliable evidence to demonstrate her actual innocence.

Accordingly, it is

ORDERED that Applicant’s Motion to Alter/Amend Order Denying Motion to Reconsider Pursuant to Fed. R. Civ. P. 59(e) is denied.

DATED at Denver, Colorado, this 25 day of Feb., 2009.

BY THE COURT:

  
\_\_\_\_\_  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

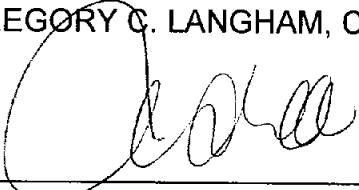
Civil Action No. 08-cv-02179-ZLW

Claudia (Claude) Burton III  
Prisoner No. 116306  
Arkansas Valley Corr. Facility  
PO Box 1000 - Unit L/U 2  
Crowley, CO 81034

John T. Lee  
Assistant Attorney General  
**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 2/26/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk