

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01309-ZLW

PATRICK DURAY PORTLEY-EL,

Applicant,

v.

WARDEN HOYT BRILL (KCCC), and
CORRECTION CORPORATION OF AMERICA,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 05 2009

GREGORY J. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

Applicant, Patrick Duray Portley-El, filed *pro se* on October 9, 2009, a "Motion to Alter or Amend Judgment" in which he asks the Court to reconsider and vacate the Order of Dismissal and the Judgment filed in this action on September 24, 2009. The Court must construe liberally the "Motion to Alter or Amend Judgment" because Mr. Portley-El is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the "Motion to Alter or Amend Judgment" will be denied.

A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may "file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b)." *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). A motion to reconsider filed more than ten days after the final judgment in an action should be considered pursuant to Rule 60(b). *See id.* at 1243.

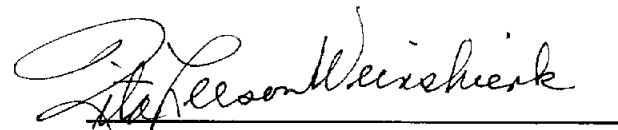
Mr. Portley-EI's "Motion to Alter or Amend Judgment," which was filed more than ten days after the Judgment was entered in this action, will be considered pursuant to Fed. R. Civ. P. 60(b). Relief under Rule 60(b) is appropriate only in extraordinary circumstances. **See *Massengale v. Oklahoma Bd. of Examiners in Optometry***, 30 F.3d 1325, 1330 (10th Cir. 1994).

The Court denied the instant habeas corpus application and dismissed the action because his asserted claims were procedurally barred. Upon consideration of the motion to reconsider and the entire file, the Court finds that Mr. Portley-EI fails to demonstrate the existence of any extraordinary circumstances that would justify a decision to reconsider and vacate the order dismissing this action. Therefore, the motion to reconsider will be denied. Accordingly, it is

ORDERED that the "Motion to Alter or Amend Judgment," which Applicant, Patrick Duray Portley-EI, filed **pro se** on October 9, 2009, and which the Court has construed liberally as a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b), is denied.

DATED at Denver, Colorado, this 4th day of November, 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. 09-cv-01309-ZLW

Patrick Duray Portley-EI
Prisoner No. 62950
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

Christopher Y. Bosch
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 11/5/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk