

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02538-ZLW

ANDRE J. TWITTY, also known as
ANDRE TWITTY, also known as
A. J. TWITTY,

Applicant,

v.

BLAKE DAVIS,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 27 2010

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

This matter is before the Court on the motion titled "Motion to Alter and Amend the Court's Fraudulent 11 January 2010 Order, Due to Abuse of Discretion, Fraud Upon the Court, Brief in Support" submitted *pro se* by Applicant, Andre J. Twitty, and filed with the Court on January 21, 2010. Mr. Twitty seeks reconsideration of the order of dismissal and the judgment filed on January 11, 2010, denying his application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Mr. Twitty is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary, Administrative Maximum, in Florence, Colorado.

The Court must construe the January 21, 2010 motion liberally because Mr. Twitty is proceeding *pro se*. 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 will be construed as a motion to reconsider, and denied.

The Court denied the application and dismissed the action because Mr. Twitty has an adequate and effective remedy pursuant to 28 U.S.C. § 2255 in the United States District Court for the Northern District of Georgia. The reasons for the dismissal are explained in greater detail in the January 11, 2010 dismissal order.

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 postjudgment motion filed within ten days of a final judgment should be construed as a Rule 59(e) motion. ***Id.***; ***see also Dalton v. First Interstate Bank***, 863 F.2d 702, 703 (10th Cir. 1988). A motion to reconsider filed more than ten days after the final judgment in an action should be considered pursuant to Rule 60(b). ***Van Skiver***, 952 F.2d at 1243.

On January 11, 2010, judgment was entered in favor of Respondent and against Applicant. The liberally construed motion to reconsider was filed on January 21, 2010. Applicant filed the motion within ten days of the final judgment in the instant action. ***See*** Fed. R. Civ. P. 6(a). Therefore, the motion to reconsider properly is filed as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e).


A motion to reconsider that reiterates issues originally raised in the application and that seeks to challenge the legal correctness of the court's judgment by arguing that the district court misapplied the law or misunderstood the litigant's position correctly is asserted pursuant to Fed. R. Civ. P. 59(e). ***See Van Skiver***, 952 F.2d at 1244.

Upon consideration of the entire file, the Court finds and concludes that Mr. Twitty fails to demonstrate some reason why the Court should reconsider and vacate its decision to dismiss this action. Therefore, the motion to reconsider will be denied. The Court notes that the motion to reconsider contains expletives and other inappropriate language and comments. Mr. Twitty is cautioned that any such documents he submits to the Court in the future will be stricken pursuant to Fed. R. Civ. P. 12(f). Accordingly, it is

ORDERED that the motion titled "Motion to Alter and Amend the Court's Fraudulent 11 January 2010 Order, Due to Abuse of Discretion, Fraud Upon the Court, Brief in Support" submitted *pro se* by Applicant, Andre J. Twitty, and filed with the Court on January 21, 2010, and which the Court has construed as a motion to reconsider filed pursuant to Fed. R. Civ. P. 59(e), is denied.

DATED at Denver, Colorado, this 27 day of JANUARY, 2010.

BY THE COURT:


CHRISTINE A. ARGUELLO
United States District Judge for
ZITA LEESON 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-02538-BNB

Andre J. Twitty
Reg. No. 18558-018
ADX – Florence
PO Box 8500
Florence, CO 81226-8500

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 1/27/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk