

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00881-ZLW

LYNN E. SCOTT,

Applicant,

v.

GREEN, Warden of B.V.C.C.,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
JUL 22 2010
GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

This matter is before the Court on the motion titled "Motion for Reconsideration" submitted *pro se* by Applicant, Lynn E. Scott, and filed with the Court on July 12, 2010. Mr. Scott seeks reconsideration of the order of dismissal and the judgment filed on June 22, 2010, denying his application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Mr. Scott is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Buena Vista correctional facility.

The Court must construe the July 12 motion liberally because Mr. Scott 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 to reconsider will be denied.

The Court denied the application and dismissed the action because Mr. Scott failed to exhaust state remedies for his two asserted claims. The reasons for the dismissal are explained in greater detail in the June 22 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 motion to alter or amend the judgment must be filed within twenty-eight days after the judgment is entered. **See** Fed. R. Civ. P. 59(e). The Court will consider Mr. Scott’s motion to reconsider pursuant to Fed. R. Civ. P. 59(e) because it was filed within twenty-eight days after the judgment was entered in this action on June 22. **See *Van Skiver***, 952 F.2d at 1243 (stating that a motion to reconsider should be construed as filed pursuant to Rule 59(e) when it is filed within the ten-day limit (limit effective prior to December 1, 2009) set forth under Rule 59(e)).

The three major grounds that justify reconsideration are: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. **See *Servants of the Paraclete v. Does***, 204 F.3d 1005, 1012 (10th Cir. 2000). A motion to reconsider is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. ***Id.*** (citing ***Van Skiver***, 952 F.2d at 1243).

Upon consideration of the entire file, the Court finds and concludes that Mr. Scott fails to demonstrate some reason why the Court should reconsider and vacate its decision to dismiss this action. Mr. Scott fails to demonstrate the existence of an intervening change in controlling law or new evidence, and he fails to convince the Court of any need to correct clear error or prevent manifest injustice. The time for Mr.

Scott to offer to dismiss voluntarily one of his two claims, **see** motion to reconsider at 3, was before the action was dismissed, not after. Therefore, the motion to reconsider will be denied.

Accordingly, it is

ORDERED that the motion for reconsideration submitted **pro se** by Applicant, Lynn E. Scott, and filed with the Court on July 12, 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 22nd day of July, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
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. 10-cv-00881-ZLW

Lynn E. Scott
Prisoner No. 60760
Buena Vista Corr. Facility
PO Box 2017
Buena Vista, CO 81211

Chris W. Alber
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 7/22/10

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk