

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01635-LTB

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

Applicant,

v.

D. BERKEBILE, Warden,

Respondent.

ORDER DENYING MOTION TO RECONSIDER

This matter is before the Court on the motion titled "Motion to Amend or Alter Judgment for an Abuse of Discretion, Rule 59e, Brief in Support" (ECF No. 5) submitted *pro se* by Applicant, Andre J. Twitty, also known as A. J. Twitty and as Andre Twitty, filed with the Court on July 12, 2012.

Mr. Twitty seeks reconsideration of the Order of Dismissal and Judgment filed on June 29, 2012, 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 July 12 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 “Motion to Vacate Judgment as a Matter of Law Brief in Support” (ECF No. 1) and dismissed the action without prejudice because Mr. Twitty was not represented by a licensed attorney admitted to practice in the United States District Court for the District of Colorado, and failed to comply with the steps outlined in *Twitty v. Davis*, No. 10-cv-02309-ZLW, 2010 WL 6283541 (D. Colo. Oct. 27, 2010) (not published), in order to obtain the Court’s permission to proceed *pro se*. The reasons for the dismissal are explained in greater detail in the June 29 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. Twitty’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 29. 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. Twitty fails to demonstrate some reason why the Court should reconsider and vacate the decision to dismiss this action. Therefore, the motion to reconsider will be denied.

Accordingly, it is

ORDERED that the motion titled "Motion to Amend or Alter Judgment for an Abuse of Discretion, Rule 59e, Brief in Support" (ECF No. 5) submitted *pro se* by Applicant, Andre J. Twitty, and filed with the Court on July 12, 2012, 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 19th day of July, 2012.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court