IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ANDRE MCDOUGAL,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ. A. No. 11-1079-GMS
	)	
STEVEN WESLEY, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,	)	
	)	
Respondents.	)	

MEMORANDUM

I. INTRODUCTION

In November 2014, the court denied petitioner Andre McDougal's habeas petition after determining that claims one and two were procedurally barred, and claims three and four failed to assert issues cognizable on federal habeas review. (D.I. 22) Presently pending before the court is McDougal's motion for reconsideration. (D.I. 24)

II. STANDARD OF REVIEW

A motion for reargument/reconsideration may be filed pursuant Federal Rule of Civil Procedure 59(e) or Federal Rule of Civil Procedure 60(b). Although motions for reargument/ reconsideration under Rule 59(e) and Rule 60(b) serve similar functions, each has a particular purpose. *United States v. Fiorelli*, 337 F.3d 282, 288 (3d Cir. 2003). For instance,"Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence." *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). A motion filed pursuant to Rule 60(b) is addressed to the sound discretion of the trial court guided by accepted legal principles applied in

light of all relevant circumstances, *Pierce Assoc. Inc. v. Nemours Found.*, 865 F.2d 530, 548 (3d Cir. 1988), but may be granted only in extraordinary circumstances. *Moolenaar v. Gov't of Virgin Islands*, 822 F.2d 1342, 1346 (3d Cir. 1987).

In contrast, Rule 59(e) is "a device [] used to allege legal error," *Fiorelli*, 337 F.3d at 288, and may only be used to correct manifest errors of law or fact or to present newly discovered evidence. *Howard Hess Dental Labs, Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237, 251 (3d Cir. 2010). The moving party must show one of the following in order to prevail on a Rule 59(e) motion: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). A motion for reargument/reconsideration is not appropriate to reargue issues that the court has already considered and decided. *Brambles USA Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990).

III. DISCUSSION

McDougal has not identified the authority by which he is seeking reargument. However, because he filed the instant motion within twenty-eight days after the entry of the court's judgment,[1] the court will treat the motion as filed pursuant to Rule 59(e). *See, e.g.*, *Holsworth v. Berg*, 322 F. App'x 143, 146 (3d Cir. 2009); *Ranklin v. Heckler*, 761 F.2d 936, 942 (3d Cir. 1985) ("Regardless of how it is styled, a motion filed within ten days of entry of judgment

[1]Rule 59(e) states that a "motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e). The court denied McDougal's petition on November 24, 2014 (D.I 22; D.I. 23), and McDougal filed his motion for reconsideration on December 11, 2014. (D.I. 24)

questioning the correctness of judgment may be treated as a motion to amend or alter the judgment under Rule 59(e).").

Nevertheless, McDougal's motion fails to warrant relief. McDougal appears to provide a new argument as to why the drug evidence "scandal" in Delaware's Office of the Chief Medical Examiner demonstrates his actual innocence which, in turn, is sufficient to satisfy the miscarriage of justice exception to the procedural default doctrine. However, McDougal merely alleges that, after the court denied his habeas petition, "the official ruling has come out [] [and] in one individual case Hakeem Nebitt's [] the judge ruled in its motion in limine and allowed the defendants to corss-examine the State's lab and chain of custody witnesses regarding the investigation and operation of the OCME lab." (D.I. 24 at 1-2) This vague argument does not demonstrate that there is any new reliable evidence demonstrating **McDougal's** innocence. Thus, the court will not reconsider its prior denial of McDougal's habeas petition

IV. CONCLUSION

For the foregoing reasons, the court will deny McDougal's motion for reconsideration. In addition, the court will not issue a certificate of appealability, because McDougal has failed to make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see United States v. Eyer*, 113 F.3d 470 (3d Cir. 1997); 3d Cir. LAR 22.2 (2011). A separate order will be entered.

24 2015
DATE

UNITED STATES DISTRICT JUDGE