

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

RONALD LEE,)
Petitioner,)
v.) No. 2:10-cv-0008-WTL-JMS
WARDEN HELEN J. MARBERRY,)
Respondent.)

Entry Discussing Motion to Vacate, Alter, or Reconsider Judgment

In an action filed after December 1, 2009, the *Federal Rules of Civil Procedure* permit a Rule 59(e) motion to be filed within 28 days after the entry of judgment. Whether a motion filed within the time period contemplated by Rule 59(e) should be analyzed under Rule 59(e) or Rule 60(b) of the *Federal Rules of Civil Procedure* depends on the *substance* of the motion, not on the timing or label affixed to it. *Borrero v. City of Chicago*, 456 F.3d 698, 701-02 (7th Cir. 2006). The purpose of a motion to alter or amend judgment under Rule 59(e) is to have the court reconsider matters "properly encompassed in a decision on the merits." *Osterneck v. Ernst and Whinney*, 489 U.S. 169, 174 (1988).

This civil rights action was filed after December 1, 2009. It was dismissed pursuant to 28 U.S.C. § 1915A(b) on January 28, 2010. The entry of judgment was followed by the filing of the petitioner's motion to vacate, alter or reconsider judgment (dkt 9) on February 2, 2010.

Given the timing of the petitioner's motion to vacate, alter or reconsider judgment relative to the entry of final judgment, and given the arguments set forth in such motion, the motion is treated as a motion pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure*.

The Court of Appeals has explained that there are only three valid grounds for a Rule 59(e) motion—newly-discovered evidence, an intervening change in the law, and manifest error in law. See *Cosgrove v. Bartolotta*, 150 F.3d 729, 732 (7th Cir. 1998). There was in this case no manifest error of law or fact, and the petitioner does not submit newly-discovered evidence or suggest that there has been a change in the law. The court did not misapprehend the petitioner's claim, nor did it misapply the law to that claim in light of the applicable law. Accordingly, the post-judgment motion to alter or amend judgment (dkt 9) is denied.

IT IS SO ORDERED.

Date: 02/04/2010



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Distribution:

Ronald Lee
15734-026
Terre Haute - FCI
Federal Correctional Institution
Inmate Mail/Parcels
P.O. BOX 33
Terre Haute, IN 47808