

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

THOMAS J. BARTELHO, )  
 )  
 Petitioner, )  
 vs. ) No. 2:12-cv-139-JMS-WGH  
 )  
 CHARLES LOCKETT, Warden, )  
 )  
 Respondent. )

**Entry Discussing Motion to Vacate, Reconsider**

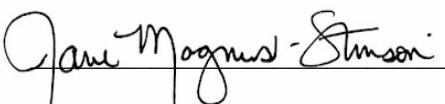
The petition for a writ of habeas corpus of Thomas Bartelho was denied on November 26, 2012. His post-judgment motion for relief was filed with the clerk on December 18, 2012. Given the timing of the post-judgment motion relative to the entry of final judgment, and given the argument set forth in such motion, the motion is treated as a motion to alter or amend judgment pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure*. *See Borrero v. City of Chicago*, 456 F.3d 698, 701-02 (7th Cir. 2006) (explaining that whether a motion filed within 10 days of the entry of judgment 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); *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989)(noting that Rule 59(e) encompasses reconsideration of matters decided on the merits).

Rule 59(e) "authorizes relief when a moving party 'clearly establish[es] either a manifest error of law or fact' or 'present[s] newly discovered evidence.'" *Souter v. International Union*, 993 F.2d 595, 599 (7th Cir. 1993) (quoting *Federal Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986)).

There was in this case no manifest error of law or fact. The court did not misapprehend the petitioner's claim or the nature of his challenge, nor did the court misapply the law to that claim. Accordingly, the post-judgment motion to vacate, etc., treated as a motion to alter or amend judgment [29], is **denied**.

**IT IS SO ORDERED.**

Date: 12/20/2012

  
Hon. Jane Magnus-Stinson  
United States District Court  
Southern District of Indiana

**Distribution:**

Thomas Bartelho  
Reg. No. 03371-036  
Atwater U.S.P  
Inmate Mail/Parcels  
P.O. Box 019001  
Atwater, CA 95301

[Gerald.coraz@usdoj.gov](mailto:Gerald.coraz@usdoj.gov)