

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
(at London)

DAVID SAMARRIPA,	)	
	)	
Petitioner,	)	Civil Action No. 6:17-86-DCR
	)	
v.	)	
	)	
J. RAY ORMOND, Warden,	)	<b>MEMORANDUM ORDER</b>
	)	
Respondent.	)	
	)	

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This matter is pending for consideration of Petitioner David Samarripa’s Motion to Alter or Amend the Judgment pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure. [Record No. 32] Samarripa presents further arguments in his motion in support of his habeas petition and asks the Court to reconsider its previous order denying his petition.

First, Samarripa’s motion is untimely. Although the Court’s order and judgment denying Samarripa’s petition was filed August 24, 2017 [Record No. 17], Samarripa did not file his motion to reconsider until December 27, 2017. A motion to alter or amend a judgment filed pursuant to Rule 59(e) must be filed no later than 28 days after entry of the judgment. Fed. R. Civ. P. 59(e). Similarly, a motion under Rule 60(b) must be made within a “reasonable time.” Fed. R. Civ. P. 60(c)(1). In these circumstances, the Court finds that Samarripa’s motion was not filed within a “reasonable” time, particularly where, as here, he simply seeks to present further legal arguments that could have been asserted in his initial petition.

More critically, on September 6, 2017, Samarripa filed a notice of appeal of the Court’s Judgment with the United States Court of Appeals for the Sixth Circuit. [Record No. 19] The

filing of the notice of appeal divests this Court of its control over those aspects of the case involved in the appeal, including further consideration of Samarripa’s arguments that he is entitled to relief pursuant to 28 U.S.C. § 2241. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). Thus, this Court does not have jurisdiction to consider Samarripa’s present motion. Accordingly, it is hereby

**ORDERED** as follows:

1. Samarripa’s Motion to Alter or Amend the Judgment pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure [Record No. 32] is **DENIED**.
2. The Clerk of the Court shall forward a copy of this Order to the Clerk of the United States Court of Appeals for the Sixth Circuit.

This 28<sup>th</sup> day of December, 2017.



**Signed By:**

**Danny C. Reeves** DCR

**United States District Judge**