

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JOHNELL DEMPSEY

CIVIL ACTION

VERSUS

NO. 07-1042

BURL CAIN, ET AL.

SECTION "K"(6)

ORDER

Before the Court is Petitioner Johnell Dempsey's Motion for Reconsideration (Rec. Doc. 34). He seeks reconsideration of this Court's affirmance of Magistrate Judge Louis Moore, Jr.'s decision denying him summary judgment. This Court affirmed because the State had raised a material issue of fact as to whether Petitioner filed his habeas petition in a timely manner. Order, June 17, 2008 (Rec. Doc. 33). Petitioner seeks reconsideration on the basis that, because his summary judgment claim was denied as to timeliness of Petitioner's claim, this Court should rule on the merits of his claim and allow the timeliness issue to remain for trial.

A motion for reconsideration may be made pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, and in order to succeed a party must "clearly establish either a manifest error of law or fact or must present newly discovered evidence." *Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005) (quoting *Pioneer Natural Res. USA, Inc. v. Paper, Allied Indus., Chem. & Energy Workers Int'l Union Local 4-487*, 328 F.3d 818, 820 (5th Cir. 2003)); see *Louisiana Environmental Action Network v. McDaniel*, Civ. A. No. 06-4161, 2008 WL 803407, at *1 (E.D. La. Mar. 12, 2008) (Vance, J.). Here, the Court is not persuaded that Petitioner has brought any kind of new allegation or evidence. Petitioner believes he is entitled to a ruling on the merits.

However, the decision on the timeliness of his petition may obviate any need to consider the merits. There being no good cause to revisit this Court's decision, accordingly,

IT IS ORDERED that Petitioner's Motion for Reconsideration (Rec. Doc. 34) is **DENIED**.

New Orleans, Louisiana, this 23rd day of September, 2008.



STANWOOD R. DUVAL, JR.
UNITED STATES DISTRICT JUDGE