

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:09CV262-3-T
(4:98CR212-T)

DWIGHT A. RUDISILL,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court on Petitioner’s “Motion to Reconsider; Application for Leave to Amend 28 U.S.C. § 2255 Motion” filed August 12, 2009. The motion is denied.

On July 15, 2009, Petitioner filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. By Order dated July 29, 2009, this Court dismissed Petitioner’s motion as untimely under the Antiterrorism and Effective Death Penalty Act (“AEDPA”). **Order of Dismissal, filed July 29, 2009.** Petitioner filed the instant motion seeking reconsideration of the Court’s Order dismissing his case as untimely and seeking to amend his motion to vacate. In his motion, Petitioner does not

explain why his motion to vacate was filed almost seven years after his case became final. In fact, he does not address this Court's Order of dismissal except to simply ask for reconsideration. Therefore, for the reasons stated in this Court July 29, 2009, Order, Petitioner's motion for reconsideration is denied. With respect to Petitioner's motion to amend, this Court is unaware of any authority allowing Petitioner to amend a closed case. Furthermore, Petitioner's case was dismissed as untimely under the AEDPA. Petitioner does not address how his new claims could be considered timely. Finally, Petitioner's claims raised in his motion to amend, attacking his conviction and sentence would amount to a successive petition filed without authorization from the Fourth Circuit Court of Appeals. *United States v. Winestock*, 340 F.3d 200 (4th Cir. 2003). Therefore, Petitioner's motion to amend is also denied.

IT IS, THEREFORE, ORDERED that the Petitioner's motions for reconsideration and for leave to amend are hereby **DENIED**.

Signed: August 13, 2009



Lacy H. Thornburg
United States District Judge

