

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:13-cv-00103-FDW**

MICHAEL WAYNE MABE,)
)
 Plaintiff,)
)
 v.)
)
 KEITH WHITENER, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court on consideration of Plaintiff’s motions for reconsideration of the order dismissing his § 1983 complaint. (Doc. Nos. 25 and 26). Plaintiff’s appeal from this Court’s order dismissing his previous motion for reconsideration was dismissed by the Circuit Court on July 15, 2014. (Doc. No. 23).

With regard to motions to alter or amend a judgment under Rule 59(e), the United States Court of Appeals for the Fourth Circuit has stated: “A district court has the discretion to grant a Rule 59(e) motion only in very narrow circumstances: ‘(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent manifest injustice.’” Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002) (quoting Collison v. Int’l Chem. Workers Union, 34 F.3d 233, 236 (4th Cir. 1994)). Furthermore, “Rule 59(e) motions may not be used to make arguments that could have been made before the judgment was entered.” Id. (internal citation omitted). Indeed, the circumstances under which a Rule 59(e) motion may be granted are so limited that “[c]ommentators observe ‘because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied.’” Woodrum v. Thomas Mem’l Hosp. Found., Inc., 186 F.R.D. 350, 351 (S.D. W. Va. 1999) (quoting 11 Charles Alan Wright, et al., Federal Practice and Procedure § 2810.1 (2d ed. 1995)).

Petitioner has not shown the existence of the limited circumstances under which a Rule 59(e) motion may be granted. That is, Petitioner's motions do not present evidence that was unavailable when he filed his motion to vacate, nor does his motion stem from an intervening change in the applicable law. Furthermore, Petitioner has not shown that a clear error of law has been made, or that failure to grant the motion would result in manifest injustice to him. See Hill, 277 F.3d at 708. In sum, the Court will deny Plaintiff's motion for reconsideration.

Rule 60(b) of the Federal Rules of Civil Procedure provides for the following:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Because Plaintiff's state conviction which he is challenging was final in 1988, he cannot demonstrate that he has been diligently pursuing his rights. Moreover, Plaintiff's conviction was sustained in Stokes County, North Carolina, which is within the Middle District. For the reasons stated, the Court finds that Plaintiff's motions for reconsideration should be denied.

IT IS, THEREFORE, ORDERED that Plaintiff's motions for reconsideration are **DENIED**. (Doc. Nos. 25 and 26).

IT IS SO ORDERED.

Signed: March 13, 2015



Frank D. Whitney
Chief United States District Judge

