

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>ERIC KENNETH JONES,</b>	:	
<b>Petitioner</b>	:	<b>No. 1:13-cv-02526</b>
	:	
v.	:	<b>(Judge Kane)</b>
	:	
<b>VINCENT MOONEY, <u>et al.</u>,</b>	:	<b>(Magistrate Judge Carlson)</b>
<b>Respondent</b>	:	

**MEMORANDUM**

Presently pending before the Court are Petitioner's motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), (Doc. No. 78), and Petitioner's motion for leave to proceed in forma pauperis (Doc. No. 77). For the reasons set forth below, Petitioner's motion to alter or amend judgment and Petitioner's motion for leave to proceed in forma pauperis will be denied.

**I. BACKGROUND**

On October 7, 2013, Petitioner, Eric Kenneth Jones, filed a 28 U.S.C. § 2254 petition for writ of habeas corpus, (Doc. No. 1), and a motion to proceed in forma pauperis (Doc. No. 3). The Court granted Petitioner's motion to proceed in forma pauperis on February 5, 2014. (Doc. No. 10.) Petitioner amended his petition for writ of habeas corpus on June 13, 2014. (Doc. No. 21.) By order dated August 19, 2015, the Court adopted Magistrate Judge Carlson's Report and Recommendation and denied Petitioner Eric Kenneth Jones' petition for writ of habeas corpus. (Doc. No. 75.) On August 27, 2015, Petitioner filed the pending motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), (Doc. No. 78), and the pending motion for leave to proceed on appeal in forma pauperis (Doc. No. 77).

## II. LEGAL STANDARD

The scope of a motion under Rule 59(e) is extremely limited. Blystone v. Horn, 664 F.3d 397, 415 (3d Cir. 2011). “A proper motion to alter or amend judgment must rely on one of three major grounds: (1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice.” Harrison v. Coker, 587 F. App’x 736, 740 (3d Cir. 2014) (quoting N. River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). It is not a tool to re-litigate and reargue issues which have already been considered and disposed of by the court. Dodge v. Susquehanna Univ., 796 F.Supp. 829, 830 (M.D. Pa. 1992); accord Blystone, 664 F.3d at 415.

## III. DISCUSSION

In his motion to alter or amend judgment, Petitioner contends that he was prejudiced by (1) counsel’s failure to investigate the victim’s rape examination; (2) jury instructions on the physical contact underlying the indecent assault charge; and (3) counsel’s decision to file an Anders brief. (See Doc. No. 78 at 2-3.) Petitioner does not argue that there has been an intervening change in controlling law or that new evidence is available. Rather, Petitioner raises three arguments that this Court previously addressed and rejected upon adopting Magistrate Judge Carlson’s Report and Recommendation and in denying Petitioner’s writ of habeas corpus. (See id.)

For example, Petitioner previously argued that “trial counsel shoud [sic] have cross-examined why a rape examination was completed” after the police responded to the victim’s call. (Doc. No. 5 at 6; see Doc. No. 1 at 6.) Petitioner also already contended that the “jury was not informed – by way of its verdict slip – [of] the contact” underlying the incident assault charge. (Doc. No. 5 at 12-13.) Furthermore, Petitioner’s petition for writ of habeas corpus alleged

“[i]neffective assistance of trial counsel for filing an Anders brief.” (Doc. No. 1 at 9.) Because Petitioner raises the same arguments previously addressed by this Court, Petitioner fails to present any basis to alter or amend the Memorandum and Order of August 19, 2015. Pellicano v. Blue Cross Blue Shield Ass’n, 540 F. App’x 95, 99 (3d Cir. 2013) (“[T]o the extent that [appellant] sought to simply reargue claims previously raised, the District Court properly denied the motions for reconsideration.”). Accordingly, Petitioner’s motion to alter or amend judgment will be denied.

Additionally before the Court is Petitioner’s motion for leave to proceed in forma pauperis. (Doc. No. 77.) Petitioner contends that he lacks the “funds to pay the filing fee in this matter and to perfect the appeal.” (Id. at 1.) Here, the Court granted Petitioner’s motion to proceed in forma pauperis on February 5, 2014. (Doc. No. 10.) On September 22, 2015, the United States Court of Appeals for the Third Circuit granted Petitioner’s motion for leave to appeal in forma pauperis. Clerk Order at 1, Jones v. Superintendent Coal Township SCI, No. 15-3102 (3d Cir. Sept. 22, 2015). Therefore, Petitioner’s motion for leave to proceed in forma pauperis will be denied as moot. See In re Shemonsky, 239 F. App’x 770, 771 (3d Cir. 2007).

#### **IV. CONCLUSION**

For the reasons stated above, Petitioner’s motion to alter or amend judgment (Doc. No. 78) pursuant to Federal Rule of Civil Procedure 59(e) will be denied, and Petitioner’s motion for leave to proceed in forma pauperis (Doc. No. 77) will be denied as moot. An appropriate order follows.