

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

RODERICK F. BAILEY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 09-349
)	Chief Judge Lancaster
U. S. MARSHALS SERVICE, and)	Magistrate Judge Bissoon
MR. RUSTIC, Warden,)	
)	
Defendants.)	

MEMORANDUM ORDER

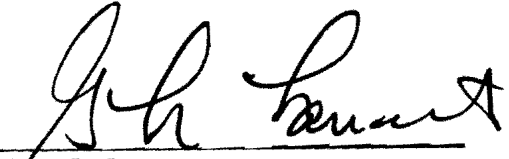
Roderick F. Bailey’s complaint pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671 *et seq.*, was dismissed on May 26, 2010, as to Defendant United States Marshals Service pursuant to Rule 12(b)(6) (Doc. 32). The case has not been closed, however, because Defendant Rustic’s Motion to Dismiss (Doc. 26) has not been ruled upon. Plaintiff, however, has now filed a Notice of Appeal (Doc. 34), a Motion to Alter or Amend Judgment (Doc. 33), a Motion to Revise Amendment of Claim (Doc. 35) and a motion pursuant to Rule 52(a) (Doc. 36) seeking findings of fact and conclusions of law.

A motion seeking to alter or amend judgment is governed by Federal Rule of Civil Procedure 59(e), which provides that “[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment” No judgment has been entered in this case. Further, the purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” Harsco Corp. v. Zlotnicki, 779 F.2d 906 (3d Cir. 1985). Reconsideration is not appropriate where a movant is seeking a “second bite at the apple.” Calhoun v. Mann, 2009 WL 159276, at 1 (E.D. Pa. Jan. 22, 2009). Here, Plaintiff

simply asks the Court to reconsider its earlier ruling on the basis of arguments already made and rejected. Plaintiff's Motion to Alter or Amend Judgment (Doc. 33) is DENIED.

Plaintiff's Motion to Revise Amendment of Claim (Doc. 35) is DENIED. Plaintiff has failed to identify the nature of his proposed amendment to his Complaint, and the Court has already ruled that amendment would be futile with respect to the U. S. Marshals Service.

Finally, no findings of fact and conclusions of law are necessary because the Court granted a motion to dismiss, making Fed. R. Civ. P. 52(a) inapplicable. Plaintiff's Motion Pursuant to Rule 52(a) (Doc. 36) is, therefore, DENIED.



Gary L. Lancaster
Chief United States District Court Judge

Dated: June 24, 2010

cc: RODERICK F. BAILEY, #08934-068
FCI Elkton
Post Office Box 10
Lisbon, OH 44432