

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOSEPH FRANCIS WEAVER, #1394333 §
VS. § CIVIL ACTION NO. 4:10cv46
DIRECTOR, TDCJ-CID §

MEMORANDUM OPINION AND ORDER

Petitioner Joseph Francis Weaver, a Texas prison inmate confined at the McConnell Unit in Beeville, Texas, proceeding *pro se*, filed a motion for relief from judgment (docket entry #47). To succeed on such a motion, 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). A motion for relief from judgment should not be used to rehash evidence, legal theories, or arguments that could have been raised or were raised before entry of judgment. *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990). Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly. *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004).

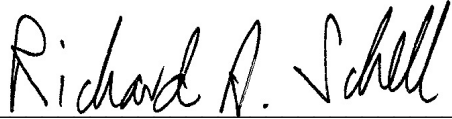
Petitioner asserts that he is entitled to relief because his case was dismissed although he had filed a motion for an extension of time in which to file his objections. A review of the docket shows that the Report and Recommendation was issued on March 8, 2013; accordingly, objections were due March 22, 2013. On March 25, 2013, the United States Magistrate Judge forwarded the closing documents to the undersigned court. After the closing documents had been forwarded, Petitioner’s

motion for an extension of time was filed that day. Final Judgment was issued on March 26, 2013.

The court informed Petitioner of the opportunity to file a Rule 60 motion and instructed him to file his objections to the Report and Recommendation with the motion, and the court would conduct a *de novo* review in the interest of justice. However, Petitioner still has not filed objections. Thus, he has presented nothing for the court to consider. It appears that Petitioner believes that he filed objections prior to this date. However, he is simply wrong. The court informed Petitioner that no objections had been filed in this case when addressing his Rule 59 motion. He has failed to present arguments that “clearly establish either a manifest error of law or fact or . . . newly discovered evidence.” *Ross*, 426 F.3d at 763. Therefore, in the absence of any new arguments or evidence that could not have been raised in Petitioner’s first proceeding, the court denies Petitioner’s motion for relief. It is accordingly

ORDERED that Petitioner’s motion for relief from judgment (docket entry #47) is **DENIED**. Any motions not previously ruled upon are **DENIED**.

SIGNED this the 28th day of September, 2014.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE