IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17-50730

SCOTT ANTHONY CROW,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas

O R D E R:

Scott Anthony Crow, Texas prisoner # 2006739, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 petition challenging his conviction for the felony offense of driving while intoxicated (DWI), subsequent offense. Crow argues that his guilty plea was not knowing and voluntary because he was not advised of the specific charge or the correct sentencing range; the prosecutor coerced him to plead guilty by threatening that he would receive at least 50 years if he rejected the plea offer of 20 years; and his trial counsel was ineffective because he advised him to accept the 20-year plea offer or face 50 years and because he did not allow Crow to make an intelligent and informed decision. Crow also argues that the district court erred in denying his counsel's motion to extend the deadline for filing an

amended petition and also erred in subsequently refusing to allow Crow to file a pro se pleading.

For the first time in his COA motion, Crow raises the following new claims: (1) the prosecutor acted vindictively by charging him with the more serious offense of second-degree felony DWI when he rejected the first plea offer; (2) he is actually innocent of the second-degree felony DWI offense because he was not involved in an accident which is required for a conviction under Texas Penal Code Annotated § 49.09(b)(1); he was not legally charged with this offense and did not commit this offense; (3) the state trial court lacked subject matter jurisdiction to convict him of the second-degree felony DWI offense; (4) trial counsel did not argue that Crow was not charged with second-degree felony DWI and allowed Crow to plead guilty to an offense he did not commit; (5) the trial court violated his due process rights by entering plea negotiations; and (6) the state did not inform him of the elements of second-degree felony DWI and did not accuse him of having an accident which is required for such a conviction. This court will not consider issues raised for the first time in a COA motion. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

To obtain a COA, Crow must make a "substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). To satisfy this standard, he must show that reasonable jurists would find the district court's decision to deny relief debatable or wrong, *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or "that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further," *Miller-El*, 537 U.S. at 327. Crow has not made the required showing concerning the above claims. Accordingly, Crow's

motion for a COA is DENIED. Crow's motions to expedite the appeal and for a personal recognizance bond are also DENIED.

/s/Edith H. Jones
EDITH H. JONES
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

SCOTT ANTHONY CROW,	§	
Petitioner,	§	
	§	
v.	§	**No. MO:15-CV-00238-RAJ**
	§	
LORIE DAVIS,	§	
Director, Texas Department of Criminal	§	
Justice, Correctional Institutions Division,	§	
Respondent.	§	

ORDER DISMISSING PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS FILED PURSUANT TO 28 U.S.C. § 2254

BEFORE THE COURT is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner, Scott Anthony Crow ("Crow"), a state prisoner, against Lorie Davis, director of the Texas Department of Criminal Justice, Correctional Institutions Division ("Respondent"). After due consideration, the Court finds that Crow is not entitled to federal habeas corpus relief or a Certificate of Appealability from the Court. For the reasons set forth hereinafter, habeas relief is **DENIED**.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Petitioner Crow, proceeding *pro se*, filed this federal habeas corpus action pursuant to Title 28, United States Code, Section 2254, complaining of the legality of his June 10, 2015 conviction for driving while intoxicated, subsequent offense under Texas Penal Code § 49.09[1]. (Doc. 1). Crow is an inmate confined at the Montford Unit of the TDCJ-CID. On February 26, 2004 Crow was charged by information with the felony offense of driving while intoxicated as a subsequent offense, and the State alleged an additional prior conviction for sentence

[1] At the time of his 2015 conviction, Crow had twice previously been convicted of operating a motor vehicle in a public place while intoxicated. Crow's June 10, 2015 conviction made for a total of three convictions of driving while intoxicated over the span of 13 years. (Doc. 19-1 at 5).

enhancement. (Doc. 11-18 at 3). Attorney Alan Harris represented Crow throughout Crow's plea and sentencing proceedings. (Doc. 1 at 8). On June 10, 2015, Crow signed a written judicial confession and pleaded guilty to the charged offense and the enhancement. (Doc. 19-1 at 5). Pursuant to a plea agreement, the trial court sentenced Crow to twenty years imprisonment at TDCJ-CID and one year suspension of his driver's license. (Docs. 11-18 at 5–6, 19-1 at 6). According to his plea agreement, Crow waived his rights to directly appeal his conviction, file a motion for new trial, file a motion in arrest of judgment, and seek habeas corpus relief based on facts that he was or should have been aware of when he made the waiver. (Doc. 19-1 at 9–12). Crow did not directly appeal his conviction. (Doc. 1 at 8–9).

On or about October 9, 2015, Crow signed a state application for writ of habeas corpus challenging his conviction. (Doc. 12-12). On October 16, 2015, the trial court file-stamped Crow's application. (*Id.* at 8). On November 25, 2015, the Texas Court of Criminal Appeals denied Crow's application without a hearing or written order on the finding of the trial court. (Doc. 12-11).

On December 21, 2015, Crow filed his Petition for Writ of Habeas Corpus by a Person in State Custody and a memorandum in support of his petition in the instant action. (Docs. 1, 3). On February 29, 2016, Crow amended his petition and filed another memorandum in support of his petition. (Docs. 6, 7).

Crow states his grounds for relief as follows:

1. **GROUND ONE**: Crow's blood was drawn pursuant to an illegal search warrant. (Docs. 1 at 6, 3 at 4–5).

2. **GROUND TWO**: Crow's trial counsel was ineffective for:
   a. Failing to prepare (Docs. 1 at 6, 3 at 8);
   b. Denying Crow access to discovery (Doc. 3 at 10);
   c. Failing to challenge the search warrant (*Id.*);

d. Advising Crow to "sign for 20 years, or else face 45 years when enhanced" (*Id.* at 8); and
e. Not allowing Crow "to make an intelligent, informed decision." (*Id.* at 10).

3. **GROUND THREE**: The State committed prosecutorial misconduct by planning Crow's guilty plea before he was arraigned or appointed counsel and "coercing" Crow to plead guilty with threats that if Crow did not accept the twenty-year plea deal, he would face at least fifty years' imprisonment. (Doc. 7 at 1–3).

On June 9, 2016, Respondent filed a response to Crow's federal habeas corpus action. (Doc. 19). On June 29, 2016, Crow filed a reply to Respondent's response. (Doc. 20). On April 11, 2017, the Court ordered Respondent to file an additional response. (Doc. 27). On July 14, 2017, Respondent filed an additional response to Crow's petition. (Doc. 37). Accordingly, this matter is ripe for disposition.

II. STANDARD OF REVIEW

"[C]ollateral review is different from direct review," and the writ of habeas corpus is an "extraordinary remedy" reserved for those petitioners whom "society has grievously wronged." *Brecht v. Abrahamson*, 507 U.S. 619, 633–34 (1993). Federal habeas review "is designed to guard against extreme malfunctions in the state criminal justice system." *Id.* Collateral review provides an important, but limited, examination of an inmate's conviction and sentence. *See Harrington v. Richter*, 562 U.S. 86, 92 (2011) ("[S]tate courts are the principal forum for asserting constitutional challenges to state convictions."). Accordingly, the federal habeas court's role in reviewing state prisoner petitions is exceedingly narrow. *Id.* "Indeed, federal courts do not sit as courts of appeal and error for state court convictions." *Dillard v. Blackburn*, 780 F.2d 509, 513 (5th Cir. 1986). Federal habeas courts must generally defer to state court decisions on the merits and on procedural grounds. *Moore v. Cockrell*, 313 F.3d 880, 881 (5th Cir. 2002). A

federal court may not grant relief to correct errors of state constitutional, statutory, or procedural law, unless a federal issue is also present. *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991); *West v. Johnson*, 92 F.3d 1385, 1404 (5th Cir. 1996).

A federal court can only grant relief if the state court's adjudication of the merits was "contrary to, or involved an unreasonable application of, clearly established Federal law," or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Berghuis v. Thompkins*, 560 U.S. 370, 378 (2010) (quoting 28 U.S.C. § 2254(d)(1)); 28 U.S.C. § 2254(d)(2). The focus of this well-developed standard "is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007).

Moreover, the federal court's focus is on the state court's ultimate legal conclusion, not whether the state court considered and discussed every angle of the evidence. *Neal v. Puckett*, 286 F.3d 230, 246 (5th Cir. 2002) (en banc); *Catalan v. Cockrell*, 315 F.3d 491, 493 (5th Cir. 2002) ("we review only the state court's decision, not its reasoning or written opinion"). Indeed, state courts are presumed to know and follow the law. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002). Factual findings, including credibility choices, are entitled to the statutory presumption, so long as they are not unreasonable "in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). Further, factual determinations made by a state court enjoy a presumption of correctness which the petitioner can rebut only by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Clark v. Quarterman*, 457 F.3d 441, 444 (5th Cir. 2006) (noting that a state court's determination under Section 2254(d)(2) is a question of fact). The presumption of correctness applies not only to express findings of fact, but also to "unarticulated

findings which are necessary to the state court's conclusions of mixed law and fact." *Valdez v. Cockerel*, 274 F.3d 941, 948 n. 11 (5th Cir. 2001). In sum, the federal writ serves as a "guard against extreme malfunctions in the state criminal justice systems," not as a vehicle for error correction. *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

III. DISCUSSION

"[T]he Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary' and that the defendant must make related waivers 'knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and consequences.'" *United States v. Ruiz*, 536 U.S. 622, 629 (2002) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). Accordingly, Crow's guilty plea must have been made knowingly, voluntarily, and intelligently to be considered constitutionally valid. *United States v. Washington*, 480 F.3d 309, 315 (5th Cir. 2007). Crow has not shown that he entered his guilty plea involuntarily, unknowingly, or unintelligently.

"A federal court will uphold a guilty plea challenged in a habeas corpus proceeding if the plea was knowing, voluntary and intelligent." *James v. Cain*, 56 F.3d 662, 666 (5th Cir. 1995). In determining whether a plea is intelligent, "the critical issue is whether the defendant understood the nature and substance of the charges against him, and not necessarily whether he understood their technical legal effect." *Taylor v. Whitley*, 933 F.2d 325, 329 (5th Cir. 1991). If a defendant understands the nature of the charges against him and the consequences of his plea, and "voluntarily chooses to plead guilty, the plea must be upheld on federal review." *Diaz v. Martin*, 718 F.2d 1372, 1376–77 (5th Cir. 1983).

Understanding the consequences of his plea requires only that the petitioner know the maximum prison term and fine charged for the offense that he might possibly receive. *James v.*

Cain, 56 F.3d 662, 666–67 (5th Cir. 1995). Reviewing courts give great weight to the defendant's statements at the plea colloquy. *See Blackledge v. Allison*, 431 U.S. 63, 73 (1977) (stating that solemn declarations in open court carry a strong presumption of verity); *see also, United States v. Cothran*, 302 F.3d 279, 283–84 (5th Cir. 2001); *United States v. Abreo*, 30 F.3d 29, 31 (5th Cir. 1994) (placing great weight on defendant's statements during plea colloquy). Official state court records are also entitled to a presumption of regularity and correctness on federal habeas review. *Carter v. Collins*, 918 F.2d 1198, 1202 n. 4 (5th Cir. 1990).

Even if Crow demonstrates that the state court's determinations were unreasonable, he would have to further show how he is entitled to relief despite the fact that he pled guilty to the conviction he now challenges. "By pleading guilty to an offense ... a criminal defendant waives all non-jurisdictional defects preceding the plea." *United States v. Owens,* 996 F.2d 59, 60 (5th Cir. 1993). The Supreme Court held in *Tollett v. Henderson*:

> [A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within [professional] standards.

411 U.S. 258, 267 (1973).

It has long been the law that a valid guilty plea bars habeas review of most non-jurisdictional claims alleging antecedent violations of constitutional rights. *Matthew v. Johnson*, 201 F.3d 353, 364 (5th Cir. 2000) (citing *Tollett v. Henderson,* 411 U.S. 258, 267 (1973); *Barnes v. Lynaugh,* 817 F.2d 336, 338 (5th Cir. 1987). Among claims not barred are those that challenge "the very power of the State to bring the defendant into court to answer the charge against him," and those that challenge the validity of the guilty plea itself. *Id.* (citing *Blackledge v. Perry,* 417

U.S. 21, 30 (1974); *Hill v. Lockhart,* 474 U.S. 52, 58 (1985); *Haring v. Prosise,* 462 U.S. 306, 320 (1983)). A plea not voluntarily and intelligently made has been obtained in violation of due process and is void. *Id.* (citing *McCarthy v. United States,* 394 U.S. 459, 466 (1969).

Crow alleges that the prosecution coerced him to plead guilty with threats that if he refused to accept the plea deal, he would be subject to at least fifty years of imprisonment. (Doc. 7 at 1–3). Additionally, Crow alleges that his trial counsel was ineffective because his counsel reiterated the prosecution's coercive threats as his own advice, and ultimately, obstructed Crow's ability to make an intelligent, informed decision regarding his guilty plea. (Doc. 3 at 8). These conclusory contentions are not supported by the record. Moreover, broadly construing his pleadings, Crow contends he was unable to enter an intelligent plea of guilty because his counsel denied him access to the discovery in his case. (*Id.* at 10).

Crow stated on the record in his plea hearing that he was voluntarily pleading guilty to this charge for no other reason than that he was guilty. (Doc. 19-2 at 13). Crow stated on the record that he was not forced, threatened, coerced, or enticed to plead guilty. (*Id.*). Further, Crow signed an agreement that noted "[m]y decision to enter a plea of guilty before the Court is my free and voluntary decision made with knowledge of the facts of the case for and against me and represents my free choice between the courses of action available to me." (Doc. 19-1 at 6). The record demonstrates that Crow knew he was charged with the second-degree felony of driving while intoxicated, subsequent offense with a habitual offender enhancement under the information and could require the State to prove those charges beyond a reasonable doubt. (Docs. 19-1 at 5, 19-2 at 8, 11). Likewise, Crow testified that his trial counsel had sufficient time to discuss the charging instrument, and that he understood what his charges were and the ramifications of the full range of punishment. (Doc. 19-2 at 11). Crow knew and understood that

the possible punishment ranged from twenty-five to ninety-nine years. (*Id.*). Crow also received admonishment of the State's recommendation of 20 years in an institutional division of TDCJ, one year driver's license suspension, $394 in court costs, $600 in attorney fees, $60 in restitution, and $30 Crime Stopper fee. (Docs. 19-1 at 6–7, 19-2 at 14). Crow understood the charge against him and the maximum prison term at the time he decided to plead guilty.

Crow offers nothing more than his own statements in support of any potential argument that his guilty plea was not knowing and voluntary, and the record strongly supports the opposite of his position. Because Crow's plea was in fact knowing and voluntary, Crow's contention that he entered into the guilty plea under coercion and without the requisite knowledge must fail. *See Ross,* 694 F.2d at 1011. Because Crow has failed to demonstrate his guilty plea was involuntary, the guilty plea must stand, and any non-jurisdictional, constitutional challenges that arose before the guilty plea was entered are waived. *See Owens,* 996 F.2d at 60. All of Crow's grounds of error relate to non-jurisdictional defects that would have arisen before he pled guilty. Consequently, Crow waived the argument that there was insufficient probable cause to support the search warrant, because he was aware of that issue before he pled guilty. He waived all of his ineffective assistance of counsel arguments and his prosecutorial misconduct claims because they, too, allegedly occurred before Crow pled guilty.

Crow's guilty plea essentially voided all of the alleged infirmities raised in his filings with the Court. Even if the state court's determinations were unreasonable, this case would nevertheless warrant denial because Crow waived his grounds of error by pleading guilty to the underlying offense. Accordingly, the Court finds that Crow is not entitled to federal habeas corpus relief. Therefore, Crow's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED**.

IV. CERTIFICATE OF APPEALABILITY

An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). Although Crow has not yet filed a notice of appeal, this Court may nonetheless address whether he would be entitled to a certificate of appealability ("COA"). *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (A district court may *sua sponte* rule on a certificate of appealability because "the district court that denies a petitioner relief is in the best position to determine whether the petitioner has made a substantial showing of a denial of a constitutional right on the issues before the court. Further briefing and argument on the very issues the court has just ruled on would be repetitious.").

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Supreme Court fully explained the requirement associated with a "substantial showing of the denial of a constitutional right" in *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In cases where a district court rejected a petitioner's constitutional claims on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.*; *see also, Henry v. Cockrell*, 327 F.3d 429, 431 (5th Cir. 2003). According to the Supreme Court in *Slack*:

> when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

529 U.S. at 478.

It is respectfully recommended that reasonable jurists could not disagree with the denial of Crow's Section 2254 petition on procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack*, 529 U.S. at 484). Accordingly, the Court finds that Crow is not entitled to a certificate of appealability as to his claims.

V. CONCLUSION

The above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED**. Furthermore, a certificate of appealability is **DENIED**.

SIGNED this 27th day of July, 2017.

ROBERT JUNELL
SENIOR U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

SCOTT ANTHONY CROW	§	
	§	
vs.	§	NO: MO:15-CV-00238-RAJ
	§	
LORIE DAVIS	§	

ORDER DENYING MOTION TO RECONSIDER UNDER RULE 59 [DOCKET NUMBER 49]

Before the Court is Petitioner's Motion for Reconsideration, filed pursuant to Fed. R. Civ. P. 59(e). [docket number 49]. Petitioner seeks reconsideration of the Court's order of July 27, 2017, denying Petitioner's §2254. [docket number 40].

A motion for reconsideration may be made under either Federal Rules of Civil Procedure 59(e) or 60(b). *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328 n.1 (5th Cir. 2004). Such a motion "calls into question the correctness of a judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (quoting *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002)). A Rule 59(e) motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Id.* at 479. Instead, Rule 59(e) "serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Id.* Relief under Rule 59(e) is also appropriate "when there has been an intervening change in the controlling law." *Schiller v. Physicians Resource Grp.*, 342 F.3d 563, 567 (5th Cir. 2003). Altering, amending, or reconsidering a judgment is an extraordinary remedy that courts should use sparingly. *Templet*, 367 F.3d at 479. Thus, the Fifth Circuit has held that "a 59(e) motion to reconsider should not be granted unless: (1) the facts discovered are of such a nature that they would probably change the outcome; (2) the facts alleged are actually newly discovered and could not have been discovered earlier by proper

diligence; and (3) the facts are not merely cumulative or impeaching." *Infusion Resources, Inc. v. Minimed, Inc.*, 351 F.3d 688, 696–97 (5th Cir. 2003).

Petitioner's Rule 59(e) motion fails to establish manifest error or offer newly discovered evidence to support Rule 59(e) relief. The basis of Petitioner's Rule 59(e) motion is basically a rehashing of all of the claims he has already made in his underlying §2254, such as prosecutorial vindictiveness, ineffective assistance of counsel, due process violations, and actual innocence. [docket number 49].

Petitioner also challenges this Court's decision denying his §2254, insofar as Petitioner would reargue everything already argued in his §2254 for this Court to reconsider. [*See* docket number 49]. However, Rule 59(e) is not designed to permit a party to continue to re-litigate the same claims with the same arguments, or even new arguments, once there has been a ruling on the merits of a claim. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 (2008) ("Rule 59(e) permits a court to alter or amend a judgment, but it 'may not be used to re-litigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.' 11 C. Wright & A. Miller, Federal Practice and Procedure §2810.1, pp. 127–128 (2d ed. 1995)" (footnotes omitted)); *United Nat. Ins. Co. v. Mundell Terminal Services, Inc.*, 740 F.3d 1022, 1031 (5th Cir. 2014) (holding Rule 59(e) motions cannot raise issues that could, and should, have been made before the judgment issued); *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 (5th Cir. 2012) (holding the same); *Celanese Corp. v. Martin K. Eby Const. Co., Inc.*, 620 F.3d 529, 531 (5th Cir. 2010) ("Such motions 'cannot be used to raise arguments which could, and should, have been made before the judgment issued and cannot be used to argue a case under a new legal theory.' "), cert. denied, —— U.S. ——, 131 S.Ct. 1790, 179 L.Ed.2d 654 (2011); *Rosenblatt v. United Way of Greater Houston*, 607 F.3d 413, 419 (5th Cir. 2010) ("[A]

motion to alter or amend the judgment under Rule 59(e) 'must clearly establish either a manifest error of law or fact or must present newly discovered evidence' and 'cannot be used to raise arguments which could, and should, have been made before the judgment issued.'" (quoting *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990)). Petitioner is not entitled to any relief from this Court under Rule 59(e) simply because Petitioner disagrees with this Court's earlier ruling.

Petitioner has failed to show a manifest error of law or present any new evidence to support a Rule 59(e) motion. Accordingly, Petitioner's Motion to Reconsider is DENIED. [docket number 49].

IT IS SO ORDERED.

SIGNED this 19th day of September, 2017.

ROBERT JUNELL
SENIOR U. S. DISTRICT JUDGE

Additional material from this filing is available in the Clerk's Office.