UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6062

ANDRE KING,

Petitioner - Appellant,

v.

WARDEN MCFADDEN,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Aiken. J. Michelle Childs, District Judge. (1:14-cv-00091-JMC)

Submitted: May 21, 2020 Decided: May 27, 2020

Before AGEE and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Andre King, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Andre King appeals the district court's order denying his motion to reconsider the denial of his motion to extend or reopen the period to note an appeal from the order denying his 28 U.S.C. § 2254 (2018) petition. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *King v. Warden McFadden*, No. 1:14-cv-00091-JMC (D.S.C. Dec. 9, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Andre King,	)	
	)	
Petitioner,	)	Civil Action No.: 1:14-cv-00091-JMC
	)	
v.	)	
	)	
Warden McFadden,	)	**ORDER AND OPINION**
	)	
Respondent.	)	
	)	

Before the court for review is Petitioner Andre King's "Motion to Reopen the Petitioner['s] Time to File an Appeal" (ECF No. 51). Petitioner requests that the court reopen the time to file an appeal of this court's Order accepting the Magistrate Judge's Report and Recommendation ("Report"). (ECF No. 51 at 1.) The court **DENIES** Petitioner's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 26, 2015, the court accepted the Magistrate Judge's Report and granted Respondent Warden McFadden's ("Respondent") Motion for Summary Judgment (ECF No. 19), denied Petitioner's Motion to Hold in Abeyance (ECF No. 23), and denied Petitioner's 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus (ECF No. 1). (ECF No. 48 at 9.) On that same day, the court mailed its Order accepting the Magistrate Judge's Report to Petitioner. (ECF No. 50.) On May 24, 2019, Petitioner filed the instant "Motion to Reopen the Petitioner['s] Time to File an Appeal." (ECF No. 51.) Petitioner asserts that on September 21, 2015—within thirty (30) days of this court's August 26, 2015 Order accepting the Magistrate Judge's December 9, 2014 Report—he "deposited [a] notice of appeal of [the court's August 26, 2015 Order] in the prison mailing system to the District Court of South Carolina." (ECF No. 51 at 2.) In support of his Motion, Petitioner provided the court with an affidavit in which he asserts that he received the

court's August 26, 2015 Order on September 9, 2015, and "on September 21, 2015[,] . . . handed [his] legal mail to the [L]ieber Correctional Institution Mail Room officials to be mailed to th[e] [c]ourt." (ECF No. 51-1 at 2.) Petitioner also states that "on November 17, 2016[,] [he] . . . sent th[e] [c]ourt a letter regarding [his] notice of appeal," but did not receive a response. (*Id.* at 2.) Petitioner provided the court with a copy of this November 17, 2016 letter, in which Petitioner "inquire[s] about the status of [his] appeal," asserts that he "deposited a Notice of Appeal in the institutional mailbox," "never received a response from the District Court or the Fourth Circuit Court of Appeals," and "made two (2) inquiries to the Office of the Clerk of Court in the interim with no response to either query," and "formally request[s] that the District Court reopen the time in which to file the Notice of Appeal." (ECF No. 51-2 at 1.) Petitioner further states in the letter that he attached a copy of the Notice of Appeal that he deposited in the Lieber Correctional Institution mailbox, but he did not submit a copy of that Notice of Appeal with the copy of the November 17, 2016 letter he filed with the instant Motion. (*See id.*)

II. DISCUSSION

Although Petitioner titled his Motion as "Motion to Reopen [] Petitioner['s] Time to File an Appeal," and he requests that the court "reopen the . . . time to file an appeal to this court regarding his writ of habeas corpus," the court liberally construes Petitioner's Motion as a motion to accept his notice of appeal as timely. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is to be liberally construed," and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976))). Reopening the time to file an appeal is

governed by Federal Rule of Appellate Procedure 4(a)(6),[1] which does not appear anywhere in Petitioner's Motion. (*See* ECF No. 51.) Instead, Petitioner cites Federal Rule of Appellate Procedure 4(c)(1) and *Houston v. Lack*, 487 U.S. 266 (1988), arguing his Notice of Appeal was filed when he "handed [it] to prison officials to be mailed to this [c]ourt." (*Id.* at 3.) Federal Rule of Appellate Procedure 4(c) provides that

> (1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

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[1] Under Rule 4(a)(6) of the Federal Rules of Appellate Procedure,

> The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
>
> > (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
> >
> > (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
> >
> > (C) the court finds that no party would be prejudiced.

The court notes that under Rule 4(a)(6), the district court can reopen the time to file an appeal in a civil case only if *all* the conditions of the Rule are met. *See* Fed. R. App. P. 4(a)(6) ("The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but *only if all the following conditions are satisfied* . . . ." (emphasis added)). The first of those conditions is "the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry." Fed. R. App. P. 4(a)(6)(A). Petitioner, by his own admission in the affidavit he submitted with the instant Motion, received the court's August 26, 2015 Order "at [L]ieber Correctional Institution on September 9, 2015," (ECF No. 51-1 at 1), which is within twenty-one (21) days of the Order's entry. *See id.* Therefore, because Petitioner received the court's August 26, 2015 Order within twenty-one (21) days of its entry, the court could not reopen the time for Petitioner to file an appeal of that Order under Rule 4(a)(6), as non-receipt of the order sought to be appealed is a necessary condition for reopening the time to file an appeal under Rule 4(a)(6). *See* Fed. R. App. P. 4(a)(6)(A).

> (A) it is accompanied by:
>
> > (i) a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of deposit and stating that first-class postage is being prepaid; or
> >
> > (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or
>
> (B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i)

Fed. R. App. P. 4(c)(1)(A)–(B). And under *Houston v. Lack*, a pro se inmate is entitled to the benefit of the "prison mailbox rule," under which the court regards a pro se inmate's petition or motion as having been filed upon delivery to prison authorities for mailing to the court. 487 U.S. 266, 276 (1988). *See also United States v. McNeill*, 523 Fed. App'x 979, 981 (4th Cir. 2013) ("A pro se litigant's legal papers are considered filed upon 'delivery to prison authorities, not receipt by the clerk.'" (quoting *Houston*, 487 U.S. at 275)). Therefore, the court construes Defendant's Motion as requesting that the court find Defendant filed a Notice of Appeal on September 21, 2015, when he claimed he "deposited [it] in the prison mailing system," and allow him to proceed with an appeal of the court's August 26, 2015 Order denying his Habeas Corpus Petition. (*Id.* at 2, 3.) *See Erickson*, 551 U.S. at 94.

The trouble here is that the court never received a Notice of Appeal from Petitioner, or any of the letters he claims to have sent inquiring about the status of his appeal. (*See* ECF Nos. 51, 51-1, 51-2.) In *United States v. McNeill*, confronted with a similar situation, the United States Court of Appeals for the Fourth Circuit, in an unpublished opinion, determined that "where a prisoner claims to have submitted a legal document to prison mail authorities, but no document arrives or is filed at the district court," the district court must make factual findings "as to whether the legal documents in question were actually delivered to the prison mail system on time." 523

F. App'x at 982. The appellant in *McNeill* was mistakenly told by another inmate to file his 28 U.S.C. § 2255 petition with the district court in the district where the petitioner was incarcerated instead of with the the district court in the district where the petitioner was sentenced. *Id.* at 980. Appellant McNeill claimed "he filled out a standard . . . form to set out his claims for relief, and then hand delivered his petition with first-class postage to prison mailroom staff." *Id.* Later, McNeill conferred with another inmate, who told McNeill that he sent his petition to the wrong court. *Id.* Appellant McNeill wrote a letter to the district court where he had sent his petition, requesting confirmation that it had been filed, but received no response. *Id.* Appellant McNeill then sent a second letter to the court, to which he received a response informing him that his petition would be returned to him because it had been filed in the wrong court. *Id.* Appellant McNeill then filed a motion in the proper district court, the Eastern District of North Carolina, requesting that the court "accept his petition as timely filed along with a 'Sworn and Incorporated Memorandum of Law as Timely Filed' pursuant to 28 U.S.C. § 1746." *Id.* at 981. The court denied McNeill's motion, and denied his motion for reconsideration, finding "the prison mailbox rule did not apply because the envelope in question was not correctly addressed to the proper recipient." *Id.*

The Fourth Circuit began its analysis by recognizing that "McNeill's case presents a matter of first impression for the Fourth Circuit, but the disposition and reasoning of other circuits in similar cases is informative." *Id.* at 981. Specifically, the court considered the United States Court of Appeals for the Ninth Circuit's decision in *Huizar v. Carey*, 273 F.3d 1220 (9th Cir. 2001), and the United States Court of Appeals for the Eleventh Circuit's decision in *Allen v. Culliver*, 471 F.3d 1196 (11th Cir. 2006) (per curiam). *Id.* at 981–82. The Fourth Circuit held that when "a prisoner claims to have submitted a legal document

to prison mail authorities, but no document arrives or is filed at the district court," the district court must make "clear factual findings" that the prisoner did or did not submit the legal documents at issue. *See id.* at 982. Because the district court in *McNeill* did not make clear factual findings, the Fourth Circuit remanded the case to the district court with the following instructions:

> On remand, the district court must answer two narrow questions. First, the court must determine whether McNeill sent his petition on time. The petitioner's diligence after a timely submission of his petition is irrelevant. There is nothing in § 2255, nor any corresponding rule, requiring that a pro se litigant diligently monitor his petition after it has been submitted. Nor did the Supreme Court require diligence in *Houston.* The district court here should not consider petitioner's diligence in making its factual determinations. This inquiry is strictly limited to what transpired before June 21, 2011, when the statute of limitations for filing the petition ended.

Id. at 983. Accordingly, the court "must [first] determine whether [Petitioner] sent his [Notice of Appeal] on time." *Id.* at 983. *See also id.* at 982 ("*Huizar* and *Allen* illustrate the *fact-bound nature* of the inquiry where a prisoner claims to have submitted a legal document to prison mail authorities, but no document arrives or is filed at the district court." (emphasis added)); *Allen*, 471 F.3d at 1198 ("[I]t is clear from the district court's order that it did not actually find as a fact that Allen had delivered a notice of appeal to the prison authorities on March 28, 2004; rather, the district court merely assumed that fact. Accordingly, on remand, the district court may inquire further as to the actual facts concerning whether or not, and when, a notice of appeal was delivered to the prison authorities."). Based on the facts before the court, the court cannot conclude that Petitioner delivered a Notice of Appeal to the prison authorities on September 21, 2015. First, Petitioner has not provided the court with any documentation supporting his claim that he delivered a Notice of Appeal to the Lieber Correctional mail room on September 21, 2015. *See* Fed. R. App. P. 4(c)(1)(A) ("If an inmate files a notice of appeal in either a civil or a criminal case, the notice

is timely if it is deposited in the institution's internal mail system on or before the last day for filing and: (A) it is accompanied by: (i) a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of deposit and stating that first-class postage is being prepaid; or (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid."). This is particularly curious given that with the instant Motion, Petitioner provided the court with a copy of the November 17, 2016 letter he asserts he sent to the court inquiring about the status of his appeal. (*See* ECF No. 51-2.) In that letter, Petitioner stated that he attached a copy of the Notice of Appeal he sent on September 21, 2015, to the letter. (*See id.* at 1.) However, though Petitioner provided the court with a copy of the November 17, 2016 letter, he did not provide the court with a copy of the Notice of Appeal. Moreover, between January 10, 2014, when Petitioner filed his Habeas Petition with the court, and September 21, 2015, when Petitioner claims to have delivered his Notice of Appeal to prison officials, the court received eight (8) other filings from Petitioner, including some in which the prison mailbox rule was at issue.[2] (*See* ECF Nos. 23, 24, 27, 34, 35, 41, 42, 43.) These eight (8) other successful filings call into question Petitioner's claim in his affidavit that he delivered four (4) filings (a Notice of Appeal and three (3) letters) to the Lieber Correctional Institution mailroom that were never received by the court, because up until that point, it appears that every mailing Petitioner deposited in the

[2] On December 9, 2014, the Magistrate Judge issued a Report recommending that the court grant summary judgment to Respondent and deny Petitioner's Motion to hold his Habeas Petition in Abeyance. (ECF No. 36.) Because the court did not receive any objections by the December 29, 2014 deadline, the court adopted the Magistrate Judge's Report. (ECF No. 38.) On January 5, 2015, the court received from Petitioner objections to the Report. (ECF No. 41.) The envelope in which Petitioner's objections had been sent bore a "RECEIVED" stamp from the mailroom at Lieber Correctional Institution dated December 29, 2014. (ECF No. 41-2 at 1.) On January 26, 2015, Petitioner filed a Motion to Alter Judgment based on the prison mailbox rule, arguing his objections were timely filed under *Houston*. (ECF No. 42.) On August 18, 2015, the court agreed with Petitioner and granted his Motion to Alter Judgment. (ECF No. 44.)

Lieber Correctional Institutional mail room were received by the court. *See Westberry v. United States*, No. 4:10-CR-00093-RBH-1, 2013 WL 5914399, at *1 (D.S.C. Oct. 31, 2013) ("Conclusory allegations contained within affidavits do not require a hearing. 'Thus, no hearing is required if the petitioner's allegations 'cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statement of fact.'" (citation omitted) (quoting *Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999))). Accordingly, as Petitioner has submitted no independent proof of the mailing of his Notice of Appeal, and the court received several other mailings from Petitioner prior to when Petitioner claims to have delivered his Notice of Appeal to prison officials, the court finds Petitioner did not deliver a Notice of Appeal on time, and must deny Petitioner's Motion. *See Roberts v. McKenzie*, No. AW-12-CV-2474, 2013 WL 3179102, at *4 (D. Md. June 20, 2013), *aff'd*, 566 F. App'x 226 (4th Cir. 2014) ("When a court does not receive a pleading within a reasonable time after the date upon which an inmate claims to have mailed it, it is appropriate to require independent proof of the mailing date, such as mail logs, prison trust fund records, or receipts for postage, before giving the inmate the benefit of the prison mailbox rule.").

III. CONCLUSION

The court **DENIES** Petitioner's "Motion to Reopen the Petitioner['s] Time to File an Appeal" (ECF No. 51).

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

May 31, 2019
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Andre King, Petitioner, v. Warden McFadden, Respondent.	)	Civil Action No. 1:14-cv-00091-JMC **ORDER AND OPINION**

Petitioner Andre King filed the instant action against Respondent Warden McFadden seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.)

This matter is before the court on Petitioner's Motion to Alter and Amend Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.[1] (ECF No. 54.) Specifically, Petitioner seeks to alter and amend the court's May 31, 2019 Order (the "May Order") in which the court denied Petitioner's "Motion to Reopen the [] Time to File an Appeal." (ECF No. 52 (referencing ECF No. 51).) For the reasons set forth below, the court **DENIES** the Motion to Alter and Amend.

I. JURISDICTION

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 2254, which provides

[1] The court observes that also pending is Petitioner's Motion to Correct the Clerical Error of the Court pursuant to Rule 60(a) of the Federal Rules of Civil Procedure. (ECF No. 61.) In this Motion, Petitioner alleges that a clerical error exists on the court's electronic docket because his "Motion to Reopen the Petitioner['s] Time to File an Appeal" (ECF No. 51) was not docketed by that title. Instead, the Clerk of Court labeled the "Motion to Reopen" on the docket as a "Motion for Extension of Time to Appeal/Reopen the Petitioner's Time to File an Appeal and Notice of Address Change." (*Id.*) Rule 60(a) allows the court to "correct a clerical mistake or a mistake . . . found in . . . the record." Fed. R. Civ. P. 60(a). Upon its review, the court observes that Petitioner has not established any basis for a finding that the docket title chosen by the Clerk is a clerical error. Moreover, docket titles for motions do not have any legal force or effect and the granting of Petitioner's Motion would have little practical significance. Therefore, Petitioner's Motion to Correct the Clerical Error of the Court (ECF No. 61) is **DENIED**.

that a federal district court has jurisdiction to entertain a § 2254 petition when the petitioner is "in custody pursuant to the judgment of a State court . . . in violation of the Constitution or laws or treaties of the United States. *Id.*

II. LEGAL STANDARD AND ANALYSIS

In the May Order, the court made the following observations in denying Petitioner's Motion to Reopen the Time to File an Appeal:

> Although Petitioner titled his Motion as "Motion to Reopen [] Petitioner['s] Time to File an Appeal," and he requests that the court "reopen the . . . time to file an appeal to this court regarding his writ of habeas corpus," the court liberally construes Petitioner's Motion as a motion to accept his notice of appeal as timely. . . . Reopening the time to file an appeal is governed by Federal Rule of Appellate Procedure 4(a)(6), which does not appear anywhere in Petitioner's Motion. (*See* ECF No. 51.) Instead, Petitioner cites Federal Rule of Appellate Procedure 4(c)(1) and *Houston v. Lack*, 487 U.S. 266 (1988), arguing his Notice of Appeal was filed when he "handed [it] to prison officials to be mailed to this [c]ourt."
>
> . . .
>
> The trouble here is that the court never received a Notice of Appeal from Petitioner, or any of the letters he claims to have sent inquiring about the status of his appeal. (*See* ECF Nos. 51, 51-1, 51-2.)
>
> . . .
>
> Based on the facts before the court, the court cannot conclude that Petitioner delivered a Notice of Appeal to the prison authorities on September 21, 2015. First, Petitioner has not provided the court with any documentation supporting his claim that he delivered a Notice of Appeal to the Lieber Correctional mail room on September 21, 2015. *See* Fed. R. App. P. 4(c)(1)(A) ("If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and: (A) it is accompanied by: (i) a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of deposit and stating that first-class postage is being prepaid; or (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid."). This is particularly curious given that with the instant Motion, Petitioner provided the court with a copy of the November 17, 2016 letter he asserts he sent to the court inquiring about the status of his appeal. (*See* ECF No. 51-2.) In that letter, Petitioner stated that he attached a copy of the Notice of Appeal he sent on September 21, 2015, to the letter. (*See id.* at 1.) However, though Petitioner provided the court with a copy of the November 17, 2016 letter,

> he did not provide the court with a copy of the Notice of Appeal. Moreover, between January 10, 2014, when Petitioner filed his Habeas Petition with the court, and September 21, 2015, when Petitioner claims to have delivered his Notice of Appeal to prison officials, the court received eight (8) other filings from Petitioner, including some in which the prison mailbox rule was at issue. (*See* ECF Nos. 23, 24, 27, 34, 35, 41, 42, 43.) These eight (8) other successful filings call into question Petitioner's claim in his affidavit that he delivered four (4) filings (a Notice of Appeal and three (3) letters) to the Lieber Correctional Institution mailroom that were never received by the court, because up until that point, it appears that every mailing Petitioner deposited in the Lieber Correctional Institutional mail room were received by the court. *See Westberry v. United States*, No. 4:10-CR-00093-RBH-1, 2013 WL 5914399, at *1 (D.S.C. Oct. 31, 2013) ("Conclusory allegations contained within affidavits do not require a hearing. 'Thus, no hearing is required if the petitioner's allegations 'cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statement of fact.'" (citation omitted) (quoting *Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999))). Accordingly, as Petitioner has submitted no independent proof of the mailing of his Notice of Appeal, and the court received several other mailings from Petitioner prior to when Petitioner claims to have delivered his Notice of Appeal to prison officials, the court finds Petitioner did not deliver a Notice of Appeal on time, and must deny Petitioner's Motion. *See Roberts v. McKenzie*, No. AW-12-CV-2474, 2013 WL 3179102, at *4 (D. Md. June 20, 2013), aff'd, 566 F. App'x 226 (4th Cir. 2014) ("When a court does not receive a pleading within a reasonable time after the date upon which an inmate claims to have mailed it, it is appropriate to require independent proof of the mailing date, such as mail logs, prison trust fund records, or receipts for postage, before giving the inmate the benefit of the prison mailbox rule.").

(ECF No. 52 at 2–4, 6–8.) Petitioner seeks to alter and amend the foregoing pursuant to Rule 59.

A. Applicable Standard under Rule 59(e)

Rule 59 allows a party to seek an alteration or amendment of a previous order of the court. Fed. R. Civ. P. 59(e). Under Rule 59(e), a court may "alter or amend the judgment if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice." *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 407 (4th Cir. 2010); *see also Collison v. Int'l Chem. Workers Union*, 34 F.3d 233, 235 (4th Cir. 1994). It is the moving party's burden to establish one of these three grounds in order to obtain relief. *Loren Data Corp. v. GXS, Inc.*, 501

F. App'x 275, 285 (4th Cir. 2012). The decision whether to reconsider an order under Rule 59(e) is within the sound discretion of the district court. *Hughes v. Bedsole*, 48 F.3d 1376, 1382 (4th Cir. 1995). A motion to reconsider should not be used as a "vehicle for rearguing the law, raising new arguments, or petitioning a court to change its mind." *Lyles v. Reynolds*, C/A No. 4:14-1063-TMC, 2016 WL 1427324, at *1 (D.S.C. Apr. 12, 2016) (citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008)).

B. Petitioner's Arguments

In his Motion, Petitioner argues that the court should reconsider the May Order because it results in the commission of either a clear error of law or a manifest injustice to him. (ECF No. 54 at 8.) In support of his argument, Petitioner asserts that he timely submitted his Notice of Appeal based on the language in Rule 4(c) of the Federal Rules of Appellate Procedure.[2] (ECF No. 54 at 3.) Moreover, Petitioner asserts that Appellate Rule 4(c) protects him because "in his Affidavit to this [c]ourt the petitioner specifically had informed this [c]ourt that on September 21, 2015 he handed his [N]otice of Appeal regarding his habeas corpus to [L]ieber C.I. prison officials." (ECF No. 54 at 3.) Based on the foregoing, Petitioner contends that by not granting his right to appeal when he handed his notice to prison officials, the court committed error and/or

[2] Rule 4(c) of the Federal Rules of Appellate Procedure provides:

> If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and: (A) it is accompanied by: (i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or (B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

App. P. 4(c).

manifest injustice by (1) disregarding the requirements of Appellate Rule 4(c) and the precedent set forth in *Houston v. Lack*, 487 U.S. 266 (1988) and *United States v. McNeill*, 523 F. App'x 979 (4th Cir. 2013); and (2) not holding "an evidentiary hearing regarding when the [P]etitioner had deposited his [N]otice of Appeal to prison officials." (ECF No. 54 at 5–8.)

C. The Court's Review

Petitioner is seeking to alter and amend the May Order on the basis that the court's decision was either a clear error of law or resulted in a manifest injustice to Petitioner. Clear error occurs when the reviewing court "is left with the definite and firm conviction that a mistake has been committed." *United States v. Harvey*, 532 F.3d 326, 336 (4th Cir. 2008) (internal quotation marks omitted); *see also United States v. Martinez–Melgar*, 591 F.3d 733, 738 (4th Cir. 2010) ("[C]lear error occurs when a district court's factual findings are against the clear weight of the evidence considered as a whole.") (internal quotation marks omitted); *Miller v. Mercy Hosp., Inc.*, 720 F.2d 356, 361 n.5 (4th Cir. 1983) (explaining that a district court's factual finding is clearly erroneous if "the finding is against the great preponderance of the evidence") (internal quotation marks omitted). Manifest injustice occurs where the court "has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension . . . ." *Campero USA Corp. v. ADS Foodservice, LLC*, 916 F. Supp. 2d 1284, 1292–93 (S.D. Fla. 2012) (citations omitted).

Upon review of the instant Motion, the court observes that Petitioner's arguments add very little new substantive argument to what he has already presented on the aforementioned issues. (*See, e.g.*, ECF Nos. 51, 51-1, 51-2, 54, 54-1, & 54-2.) A Rule 59(e) motion should not be used as an opportunity to rehash issues already ruled upon because a litigant is displeased

with the result. *See Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir. 1993) (stating that "mere disagreement does not support a Rule 59(e) motion"); *see also Consulting Eng'rs, Inc. v. Geometric Software Solutions & Structure Works LLC*, 2007 WL 2021901, at *2 (D.S.C. July 6, 2007) ("A party's mere disagreement with the court's ruling does not warrant a Rule 59(e) motion, and such motion should not be used to rehash arguments previously presented or to submit evidence which should have been previously submitted."). In the May Order (ECF No. 52), the court cited to appropriate substantive case law and provided specific reasoning to support its decision to find that Petitioner did not deliver a Notice of Appeal on time. The May Order expressly explains why (1) Petitioner's Affidavit lacks credibility, (2) an evidentiary hearing is unnecessary, and (3) Appellate Rule 4(c) is inapplicable based on the record before the court. (*See* ECF No. 52 at 6–8.) As a result, the court is not persuaded that entry of the May Order resulted in the commission of either clear error of law or manifest injustice. Accordingly, the court must deny Petitioner's Motion to Alter and Amend Judgment.

III. CONCLUSION

For the reasons set forth above, the court hereby **DENIES** Petitioner Andre King's Motion to Alter and Amend Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. (ECF No. 54.)

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

December 9, 2019
Columbia, South Carolina

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