

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANTHONY PHILLIPS,

Petitioner,

v.

Case No.: 8:20-cv-1862-T-27AAS
Criminal Case No.: 8:18-cr-91-T-27AAS

UNITED STATES OF AMERICA,

Respondent.

ORDER

BEFORE THE COURT is Petitioner Phillips' "Motion to Resubmit Motion to Alter or Amend Judgment Under Rule 59(e), Based on Prior Error in Filing" (cv Dkt. 18). No response is necessary. The motion is **DENIED**.

Phillips seeks to "resubmit" his prior motion for reconsideration of the order denying his § 2255 motion, "based on the inadvertent error of his failing to include the enclosed memorandum from an official with the Bureau of Prisons." (cv Dkt. 18 at 1); (cv Dkt. 16). He contends that the document "establishes a valid reason for [his] untimely filing of his 2255, and grounds for 'equitable tolling' under the authority provided in *Holland v. Florida*, 560 U.S. 631, 649 (2010)." (cv Dkt. 18 at 2). Upon review, his contentions are without merit. He raises arguments that were considered and rejected in his § 2255 motion, and he does not present new evidence which could not have been presented earlier. Indeed, he previously provided the purported memorandum. See (cv Dkt. 16-1); (cv Dkt. 18-1). Accordingly, he has not demonstrated grounds justifying

(Appendix C)

reconsideration under Fed. R. Civ. P. 59(e).¹

Additionally, Phillips has not met the requisite standard for a certificate of appealability. I find that no jurists of reason could disagree with the resolution of Phillips' constitutional claims or could conclude the issues presented are adequate to deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322 (2003); *see also* (cv Dkt. 12 at 10). Further, jurists of reason could not disagree with the procedural rulings. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, Phillips' "Motion to Resubmit Motion to Alter or Amend Judgment Under Rule 59(e), Based on Prior Error in Filing" (cv Dkt. 18) is **DENIED**.

DONE AND ORDERED this 5th day of May, 2021.

/s/ James D. Whittemore

JAMES D. WHITTEMORE
United States District Judge

Copies to: Petitioner, Counsel of Record

¹ Reconsideration is justified by (1) an intervening change in controlling law, (2) the availability of new evidence, and (3) clear error or manifest injustice. *Del. Valley Floral Group, Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1383 (Fed. Cir. 2010) (citing *Degirmenci v. Sapphire-Ft. Lauderdale, LLLP*, 642 F. Supp. 2d 1344, 1353 (S.D. Fla. 2009)); *Fenello v. Bank of Am., NA*, 577 F. App'x 899, 903 n.7 (11th Cir. 2014). "[A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quotation omitted) (alterations in original).

Phillips' motion is also untimely since it was not filed within 28 days after the entry of judgment. *See* (cv Dkts. 13, 18); *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020) (citing Fed. R. Civ. P. 59(e)). To the extent the untimely motion is construed as a Rule 60(b) motion, it is also due to be denied. *See Jones v. S. Pan Servs.*, 450 F. App'x 860, 862 (11th Cir. 2012) (citations omitted).

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY PHILLIPS — PETITIONER
(Your Name)

VS.

UNITED STATES — RESPONDENT(S)

PROOF OF SERVICE

I, ANTHONY PHILLIPS, do swear or declare that on this date, JANUARY 10TH, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

SOLICITOR GENERAL OF THE UNITED STATES
ROOM 5614, DEPARTMENT OF JUSTICE, 950 PENNSYLVANIA AVE, N.W.
WASHINGTON, D.C. 20543-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JANUARY 10TH, 2022

* 

(Signature)