

CASE NO. 19-8644
IN THE UNITED STATES SUPREME COURT

MICHAEL L. KING,

Petitioner,

vs.

MARK S. INCH, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX TO RESPONDENTS' BRIEF IN OPPOSITION

ASHLEY MOODY
ATTORNEY GENERAL

CAROLYN M. SNURKOWSKI*
Associate Deputy Attorney General
Florida Bar No. 158541
*Counsel of Record

SCOTT A. BROWNE
Chief Assistant Attorney General
Florida Bar No. 0802743
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
scott.browne@myfloridalegal.com
E-Service: capapp@myfloridalegal.com

COUNSEL FOR RESPONDENTS

INDEX TO APPENDIX

Appendix A United States Middle District Court's Order denying
Petitioner's Rule 59(e) motion to alter or amend
the judgment, Case No. 8:17-cv-985-T-33TGW, dated
March 6, 2018, Document 36

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MICHAEL L. KING,

Petitioner,

v.

Case No. 8:17-cv-985-T-33TGW
DEATH PENALTY PETITION

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER

This cause is before the Court on Michael L. King's Rule 59(e) motion to alter or amend the judgment. (Doc. 35). King is represented by counsel.

BACKGROUND

This Court denied King's 28 U.S.C. § 2254 petition for writ of habeas corpus seeking relief from his convictions for the kidnaping, sexual battery, and murder of Denise Amber Lee, a young married mother of two young children. (Doc. 33). Judgment was entered February 6, 2018. (Doc. 34). King now seeks to alter or amend the judgment, or, in the alternative, to have this Court grant a certificate of appealability.

Federal Rule of Civil Procedure 59(e) Standard

"[A] motion for reconsideration must demonstrate why the court should reconsider its past decision and set forth facts or law of a strongly convincing nature to induce the court

to reverse its prior decision.” *Fla. Coll. of Osteopathic Med., Inc. v. Dean Witter Reynolds, Inc.*, 12 F. Supp. 2d 1306, 1308 (M.D. Fla. 1998). “In the interests of finality and conservation of scarce judicial resources, reconsideration is an extraordinary remedy to be employed sparingly.” *Lamar Adver. of Mobile, Inc. v. City of Lakeland*, 189 F.R.D. 480, 489 (M.D. Fla. 1999)).

This Court recognizes three grounds to justify reconsideration of a prior order under Federal Rule of Civil Procedure 59(e): “(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.” *Fla. Coll. of Osteopathic Med., Inc., supra*. Further, as explained in *Ludwig v. Liberty Mut. Fire Ins. Co.*, “This Court will not reconsider its judgment when the motion for reconsideration fails to raise new issues but, instead, relitigates that which the Court previously found lacking.” 2005 WL 1053691, at *3-4 (M.D. Fla., Mar. 30, 2005). In addition, “a motion for reconsideration is not the proper forum for the party to vent dissatisfaction with the Court's reasoning.” *Id.* at *4. See also, *King v. Bd. of Cty. Comm’r*, 2018 WL 515350 *1 (M.D. Fla., Jan, 23, 2018).

DISCUSSION

The motion before the Court is predicated on the same arguments and statements King made in his habeas petition. King’s main argument is that this Court found the Respondent’s arguments persuasive.

King does cite one case in which this Court granted a Rule 59(e) motion -- *Goldring v. Lamdin*, 2006 WL 5669878, at *1 (M.D. Fla., Nov. 20, 2006) (granting Rule 59(e) motion in federal habeas case). In *Goldring*, the Court granted the motion to alter or amend based

on the Court's miscalculation of the timeliness of Goldring's petition, **not on the merits**.

King has not met the Rule 59(e) standard for granting the motion. King's major complaint is that this Court relied on the Respondent's arguments in denying his petition. This argument is not a basis for granting a Rule 59(e) motion. See *Brown v. United States*, 2015 WL 542662 n.4 (S.D. Ala., Feb. 10, 2015). In fact, a district court may incorporate a party's arguments to serve as its explanation for its ruling, so long as those arguments, in conjunction with the record, provide the Court of Appeals an opportunity to engage in meaningful review. See *United States v. Valencia-Trujillo*, 462 F. App'x. 894, 897 (11th Cir. 2012):

District court orders 'should contain sufficient explanations of their rulings so as to provide this Court with an opportunity to engage in meaningful appellate review.'"). *Danley v. Allen*, 480 F.3d 1090, 1090, 1091 (11th Cir.2007). That principle, however, does not prohibit a district court from incorporating a party's arguments as the basis and explanation for its ruling. Valencia-Trujillo's motion and the government's response, as well as the exhibits and attachments submitted to the district court, provide a sufficient basis for our review of the merits in this case.

See also, *United States v. Hastie*, 2015 WL 13308899 n. 5 (S.D. Ala, Feb. 25, 2015)

(A district court may incorporate a party's arguments to serve as its explanation for its ruling, so long as those arguments, in conjunction with the record, provide an opportunity to engage in meaningful review.); *Brown v. United States*, 2015 WL 542662, at *1 & n.4 (S.D. Ala., Feb. 10, 2015) (denying motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 "for the reasons set forth in the Government's response [], which the Court adopt[ed] as its own reasoning ..." (capitalization omitted)); *Lopez v. United States*, 2014 WL 2873171 n.5 (S.D. Ala., June 24, 2014) (Same).

Nothing in King's Rule 59(e) motion convinces this Court that he is entitled to relief from the judgment or a certificate of appealability.

Accordingly, the Court orders:

1. That King's Rule 59(e) motion to alter or amend the judgment (Doc. 35) is denied.
2. King is not entitled to a certificate of appealability (COA). He does not have the absolute right to appeal. 28 U.S.C. § 2253(c)(1). A COA must first issue. *Id.* To merit a COA, he must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. See 28 U.S.C. § 2254(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). King has not made the requisite showing. Finally, because he is not entitled to a COA, he is not entitled to appeal in forma pauperis.

ORDERED at Tampa, Florida, on March 6, 2018.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Counsel of Record