

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TODD A. D'ANTONI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

10-cv-675-wmc

On January 7, 2013, the court denied a motion filed by Todd A. D'Antoni, seeking relief from his conviction and sentence under 28 U.S.C. § 2255. The court found that D'Antoni's underlying conviction became final in 1992, and that his motion was filed well beyond the one-year statute of limitations found in § 2255(f). On January 25, 2013, D'Antoni filed a motion for reconsideration of that decision. Liberally construed, this motion is governed by Fed. R. Civ. P. 59(e), which allows a district court to "alter or amend a judgment" if the request is made within 28 days.

To prevail on a Rule 59(e) motion, a litigant must "clearly establish" that: (1) the court committed a manifest error of law or fact; or (2) newly discovered evidence precluded entry of judgment. *Blue v. Hartford Life & Acc. Ins. Co.*, 698 F.3d 587, 598 (7th Cir. 2012) (quoting *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006)). Instead of attempting to establish either of these grounds for relief, D'Antoni's motion for reconsideration merely repeats the same arguments he made in support of his § 2255 motion. Since a Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of

judgment,” D’Antoni’s motion for reconsideration will be denied. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008) (quoting 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2810.1, at 127-28 (2d ed. 1995)); *see also Sigsworth v. City of Aurora*, 487 F.3d 506, 512 (7th Cir. 2007) (observing that a Rule 59(e) motion is not properly utilized “to advance arguments or theories that could and should have been made before the district court rendered a judgment”) (quoting *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995)).

ORDER

IT IS ORDERED that Todd A. D’Antoni’s motion for reconsideration (dkt. # 6) is DENIED.

Entered this 5th day of February, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge