

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL L. RIGGS,

Defendant.

**Case No. 07-20095-01-JWL
Civil Case No. 10-2203-JWL**

MEMORANDUM AND ORDER

This court recently denied Defendant Michael L. Riggs’s motion to vacate his sentence pursuant to 28 U.S.C. § 2255 (doc. 45), finding his claims procedurally barred given his failure to raise them on direct appeal (doc. 49).

Mr. Riggs now asks the court to reconsider its decision “for adjudication upon points presented, that were not addressed, and reconsideration of the points addressed without regard to the arguments presented” (doc. 50). A motion asking the court to reconsider a previous ruling shall be based on (1) an intervening change in controlling law, (2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice. *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. *Id.* at 1012. Given the court’s determination that Mr. Riggs was procedurally barred from raising his claims,

he fails to meet this standard.

In addition, Mr. Riggs requests a certificate of appealability (doc. 51). A district court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The Tenth Circuit has interpreted this standard to require a petitioner to demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Saiz v. Ortiz*, 392 F.3d 1166, 1171 n.3 (10th Cir. 2004) (quoting *Tennard v. Dretke*, 542 U.S. 274, 282 (2004)). Again, Mr. Riggs identifies no issues that would warrant a certificate of appealability.

For these reasons, his motions are both denied.

IT IS THEREFORE ORDERED BY THE COURT that defendant’s motion to reconsider (doc. 50) and his request for a certificate of appealability (doc. 51) are **denied**.

IT IS SO ORDERED this 16th day of August, 2010.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge