

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

United States of America,

Plaintiff,

v.

Case No. 10-20037-01-JWL

Don Milton Steele,

Defendant.

MEMORANDUM & ORDER

In August 2019, defendant Don Milton Steele filed a petition under 28 U.S.C. § 2255. Mr. Steele asserted that he was entitled to submit the petition under § 2255(f)(4) based on the Tenth Circuit’s decision in *Madkins v. United States*, 866 F.3d 1136 (10th Cir. 2017). Because the motion was clearly successive and subject to the authorization requirements of § 2255(h), which Mr. Steele had not met, the court dismissed the petition for lack of jurisdiction. *See Prost v. Anderson*, 636 F.3d 578, 591 (10th Cir. 2011) (§ 2255(f) does not allow petitioner to evade § 2255(h)’s restrictions; rather, petitioner must meet both subsections’ requirements). The court also denied a certificate of appealability.

Thereafter, Mr. Steele filed a motion for reconsideration of that order (doc. 471) and, at the same time, appealed the court’s order to the Tenth Circuit. The Circuit has abated the appeal pending a resolution of the motion for reconsideration. That motion is now denied. Although Mr. Steele does not identify a procedural vehicle for his motion, grounds “warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest

injustice.” *See Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citing *Brumark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir. 1995)). Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. *Id.* It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing. *Id.* (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)).

Mr. Steele has not identified any appropriate basis for reconsideration of the court’s prior memorandum and order. Mr. Steele simply reargues the merits of his successive petition and urges the court to consider it. But Mr. Steele has failed to point to any clear error in the court’s order or any other basis for reconsideration. The motion is denied.

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Steele’s motion for reconsideration (doc. 471) is denied.

IT IS SO ORDERED.

Dated this 19th day of September, 2019, at Kansas City, Kansas.

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