

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

KENNETH DAVID McNELLY,

Petitioner,

v.

CASE NO. 17-3141-SAC

SAM CLINE,

Respondent.

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's third motion to alter or amend judgment (Doc. #15).

A motion to alter or amend may be granted where the moving party shows there is an intervening change in the governing law, there is new evidence that was not previously available, or there is a need to correct clear error or prevent manifest injustice. *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

The Court has examined the motion and finds that petitioner is not entitled to relief. Petitioner did not file this motion within 28 days of the judgment, as required by Rule 59(e) of the Federal Rules of Civil Procedure, nor does he present any claim that was not available earlier, as his argument arises from the Court's statement of the background of his case in its order entered on November 3, 2017. Finally, nothing in petitioner's present motion persuades the Court that he has established a basis for equitable tolling that would allow this time-barred petition for habeas corpus to proceed.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion to alter or amend judgment is denied.

**IT IS SO ORDERED.**

DATED: This 13th day of December, 2017, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge