

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
MISSOULA DIVISION

Danny Lee Warner v. Warden Harold May, Montana Attorney
General

CV 24-126-M-DLC · No. CV 24-126-M-DLC; 9:24-cv-00126 · Decided December 15, 2025

SUMMARY

The United States District Court for the District of Montana denied Danny Lee Warner’s motion under Federal Rules of Civil Procedure 59(e) and 60 to set aside or amend the dismissal of his untimely 28 U.S.C. § 2254 habeas petition. The court held that Warner had received an opportunity to address timeliness, and that he demonstrated neither a due process violation nor newly discovered evidence, clear error, manifest injustice, or an intervening change in controlling law.

CASE DETAILS

COURT	United States District Court for the District of Montana, Missoula Division
WRITING FOR THE COURT	Dana L. Christensen
JURISDICTION	United States District Court for the District of Montana, Missoula Division
DECIDED	December 15, 2025
DOCKET	CV 24-126-M-DLC; 9:24-cv-00126
DISPOSITION	dismissed
PROCEDURAL POSTURE	After the court dismissed Warner's 28 U.S.C. § 2254 petition as untimely, Warner filed a notice of appeal and moved under Federal Rules of Civil Procedure 59(e) and 60 to set aside or vacate the judgment. The district court denied the motion.
STANDARD OF REVIEW	Rule 59(e) relief is discretionary and generally requires newly discovered evidence, clear error or manifest injustice, or an intervening change in controlling law. Rule 60 relief was assessed under the grounds asserted by Warner.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Danny Lee Warner v. Warden Harold May, Montana Attorney General

TOPICS

motion for reconsideration

federal habeas corpus

appellate jurisdiction

appellate procedure

civil procedure

PRACTICE AREAS

federal habeas corpus

post-judgment motions

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the district court violated due process by dismissing Warner's § 2254 petition without notice or an opportunity to respond.
2. Whether the filing of Warner's notice of appeal deprived the district court of jurisdiction to consider his Rule 59(e) and Rule 60 motion.
3. Whether Warner satisfied the requirements for relief under Rule 59(e) by showing newly discovered evidence, clear error or manifest injustice, or an intervening change in controlling law.
4. Whether Warner was entitled to relief under Rule 60 based on the alleged error in dismissing his petition without an opportunity to respond.

HOLDINGS

1. The district court did not violate due process because the State raised timeliness in its answer, Warner responded to the statute-of-limitations argument and equitable-tolling issue, and the court considered both parties' positions before dismissing the petition.
2. The notice of appeal did not prevent the district court from considering the Rule 59(e) motion because a motion listed in Federal Rule of Appellate Procedure 4(a)(4)(A), including a Rule 59 motion, renders the notice of appeal ineffective pending disposition of the motion.
3. Warner was not entitled to Rule 59(e) relief because he presented no newly discovered evidence, intervening change in controlling law, clear error, or manifest injustice, and largely repeated arguments previously considered and rejected.
4. Warner was not entitled to relief under Rule 60 because the court had not dismissed the petition without notice or an opportunity to respond, and Warner identified no other reason justifying relief.

KEY QUOTATIONS

“Once a notice of appeal is filed, the district court is divested of jurisdiction over the matters being appealed.” (at 1)

“A rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” (at 2)

“Rule 59(e) is not a vehicle for unsuccessful claims to be considered anew” (at 3)

FACTUAL BACKGROUND

Warner filed a § 2254 habeas petition that the district court determined was untimely. The State raised timeliness in its answer, and Warner responded by contesting the limitations-period start date and asserting equitable tolling. After the court rejected those arguments and dismissed the petition, Warner sought relief from the judgment, asserting that he had not received notice or an opportunity to respond and repeating his timeliness and equitable-tolling arguments.

PROCEDURAL HISTORY

Warner sought federal habeas corpus relief under 28 U.S.C. § 2254. Following the State's answer and Warner's reply, the district court dismissed the petition as untimely. Warner then filed a notice of appeal and a Rule 59(e) and Rule 60 motion challenging the dismissal, which the court denied.

DISPOSITION

dismissed

CASES CITED

- Nat. Res. Def. Council, Inc. v. Sw. Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001)
- Foman v. Davis, 371 U.S. 178 (1962)
- McDowell v. Calderon, 197 F.3d 1253, 1255 & n. 1 (9th Cir. 1999) (en banc) (per curiam)
- Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n. 5 (2008)
- Miller v. Transamerican Press, Inc., 709 F.2d 524, 527 (9th Cir. 1983)
- United Nat. Ins. Co. v. Spectrum Worldwide, Inc., 555 F.3d 772, 780 (9th Cir. 2009)
- 389 Orange Street Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999)
- Weeks v. Bayer, 246 F.3d 1231, 1236 (9th Cir. 2001)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION DANNY LEE WARNER, CV 24-126-M-DLC Petitioner, ORDER vs.
WARDEN HAROLD MAY, MONTANA ATTORNEY GENERAL, Respondents. Petitioner
Danny Lee Warner (“Warner”) filed an application under 28 U.S.C. §2254, seeking habeas corpus
relief. Upon receiving an Answer from the State and Warner’s reply, (Docs.

20 & 26), the matter was dismissed as untimely. See generally, (Doc. 32.) Warner filed a notice of
appeal. (Doc. 34.) He also filed a motion to set aside the judgment and/or vacate pursuant to
Federal Rules of Civil Procedure 59(e) and 60. (Doc. 36.) Warner first suggests that under Rule 60
this Court erred by dismissing his petition without notice or an opportunity to respond.

(Doc. 36 at 1.) Warner is mistaken. In its Answer, the Respondents raised the issue of timeliness.
See, (Doc. 20 at 55-56.) Warner responded to the statute of limitations argument and asserted he

should be entitled to equitable tolling. (Doc. 26 at 9-14.)

The Court considered both parties positions and ultimately determined that the filing was untimely. (Doc. 32 at 7-16.) Thus, Warner's argument that he is entitled to reconsideration under Rule 60 based upon this Court's mistake in dismissing his petition without giving him an opportunity to respond is without merit. There was no due process violation and there is no other reason that justifies relief under the Rule 60.

In general, "[o]nce a notice of appeal is filed, the district court is divested of jurisdiction over the matters being appealed." *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F. 3d 1163, 1166 (9th Cir. 2001). This rule is not absolute.

The filing of one of the motions referenced in Federal Rule of Appellate Procedure 4 renders a notice of appeal ineffective pending disposition of such motion. See Fed. R. App P. 4(a)(4)(A). A Rule 59 motion to alter or amend the judgment is included within the motions that render the notice of appeal ineffective. Fed. R. App P. 4(a)(4)(A)(iv), (vi). Rule 59(e) provides a mechanism by which a trial judge may alter, amend, or vacate a judgment.

See *Foman v. Davis*, 371 U.S. 178 (1962). Under Rule 59(e), a party may move to have the court amend its judgment within twenty-eight days after entry of the judgment. "Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion." *McDowell v. Calderon*, 197 F. 3d 1253, 1255 n. 1 (9th Cir.

1999)(en banc)(per curiam)(internal quotation marks omitted)." "A rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Id.* (citation and quotation marks omitted).

A litigant may not use Rule 59(e) "to relitigate old matters or to raise arguments...that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008). The showing required under Rule 59(e) is difficult to meet. Such a motion requires "a substantive change of mind" by the Court. *Miller v. Transamerican Press, Inc.*, 709 F. 2d 524, 527 (9th Cir.

1983). Under Rule 59(e), it is appropriate to alter or amend a previous ruling if "(1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law." *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F. 3d 772, 780 (9th Cir.

2009)(citation omitted); see also *389 Orange Street Partners v. Arnold*, 179 F. 3d 656, 665 (9th Cir. 1999); *McDowell*, 197 F. 3d at 1255. The requirement of such a showing is a "high hurdle."

Weeks v. Bayer, 246 F. 3d 1231, 1236 (9th Cir. 2001). Warner has not met the high bar to warrant alteration or amendment in the present matter. Warner largely repeats his claims relating to the start date of his limitations period and the equitable tolling arguments he previously presented.

This Court considered and rejected the same arguments and explained the reasoning for doing so. See, (Doc. 32 at 8-16.) While the Court understands that Warner disagrees with the determination, he has not presented newly discovered evidence, nor has he demonstrated that there has been a recent change in controlling law that would support his position under Rule 59(e).

Put another way, nothing Warner presents in his motion gives the Court pause or has caused a “substantive change of mind” relative to the prior order. McDowell, 197 F. 3d at 1255. While Warner disagrees with this Court’s finding that his §2254 petition was untimely, such disagreement does not demonstrate clear error or that the Court’s ruling was manifestly unjust.

Id. Rule 59(e) is not a vehicle for unsuccessful claims to be considered anew and Warner has not provided one of the permissible grounds to support his motion. Accordingly, this Court declines to alter or amend its previous ruling. Morrison’s motion to set aside the judgment (Doc. 36) is DENIED. DATED this 15th day of December, 2025. /s/ Dana L. Christensen Dana L. Christensen
United States District Court