

subsequently denied on March 28, 2001. Plaintiff then filed an appeal with the United States Court of Appeals for the Third Circuit. (D.I. 37) On July 10, 2002, the Third Circuit affirmed the March 28, 2001 decision of this court. (D.I. 41) Plaintiff's petition for certiorari to the Supreme Court of the United States, appealing the Third Circuit's decision, was also denied. (D.I. 44) Plaintiff then filed a motion in this court for relief from judgment pursuant to Fed. R. Civ. P. 60. (D.I. 43) Plaintiff alleged in his motion that the court erred by only considering plaintiff's procedural due process rights when granting the motion to dismiss, and did not consider plaintiff's substantive due process claims nor his Equal Protection claims. (D.I. 43) The court denied plaintiff's motion for relief. (Id.) It is from that decision, that plaintiff's present motion for reargument is based.

2. The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Café ex-rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Accordingly, a court may alter or amend its judgment if the movant demonstrates at least one of the following: (1) a change in the controlling law; (2) availability of new evidence not available when summary judgment was granted; or (3) a need to correct a clear error of law or fact or to prevent manifest injustice. See id.

3. Plaintiff asserts that the court committed legal error by applying an incorrect legal standard to the Rule 60(b) motion. Plaintiff argues that the court's May 16, 2000 decision failed to address plaintiff's substantive due process and equal protection claims. Plaintiff also asserts, however, that he raised those issues in his appeals to the Third Circuit and to the Supreme Court, stating "the issue of the failure to resolve these controversies was fully appealed while the controversies remain unaddressed." (D.I. 50 at 4) The Third Circuit concluded that plaintiff's "remaining contentions are without merit and in need of no further discussion." (D.I.41 at 5) The fact that this court and the Third Circuit determined that plaintiff's claims did not merit lengthy discussion does not mean that plaintiff's claims went unaddressed. Moreover, it is axiomatic that once an issue has become the subject of an appeal, the lower court is without jurisdiction to reconsider the issue. See Ginsburg v. Stern, 263 F.2d 457, 458 (3d Cir. 1959). Plaintiff's motion for reargument is denied.

4. Plaintiff also moves for leave to file an amended complaint. Motions to amend, pursuant to Fed. R. Civ. P. 15(a), "shall be freely given when justice so requires." See also Gooding v. Warner-Lambert Co., 744 F.2d 354, 358 (3d Cir. 1984). It is, however, well established law that once an appeal has been filed, absent a remand, the district court is without subject

matter jurisdiction to grant amendments to the complaint. See
Thompson v. Harry C. Erb, Inc., 240 F.2d 452, 454 (3d Cir. 1957);
Grand Opera Co. v. Twentieth Century-Fox Film Corp., 235 F.2d
303, 308 (7th Cir. 1956). Consequently, plaintiff's motion to
amend the complaint is denied.

Sue L. Robinson
United States District Judge