IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

JAMES ARTHUR BIGGINS,)	
Petitioner,)	
V.)	Civil Action No. 99-188-GMS
THOMAS I CARROLL W. I	j	
THOMAS L. CARROLL, Warden, and)	
ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

On September 13, 2002, the court denied James Arthur Biggins' petition for a writ of habeas corpus. The court concluded that Biggins' exhausted claims lacked merit, and that his remaining claims were procedurally barred from federal habeas review. Biggins has now filed a document entitled "Motion for Rehearing," which the court treats as a timely motion for reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. For the reasons that follow, the court will deny Biggins' motion.

I. STANDARD OF REVIEW

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Accordingly, a court may grant a motion for reconsideration if the moving party shows one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear

error of law or fact or to prevent manifest injustice. *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)(citing *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995). A motion for reconsideration is not appropriate to reargue issues that the court has already considered and decided. *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990).

II. DISCUSSION

Biggins first asserts that the court "erroneously interpreted and read" his claims.

Inexplicably, he fails to cite any specific claim which the court misinterpreted. Moreover, in interpreting Biggins' lengthy and inartfully drafted submissions, the court liberally construed each in an effort to provide review of his claims to the fullest extent permissible under federal habeas law.

It next appears that Biggins alleges that the respondents waived their right to argue that some of his claims were procedurally defaulted. Biggins is mistaken. As a matter of federal habeas law, a court may raise the issue of procedural default *sua sponte*, notwithstanding the respondents' failure to assert it. *Szuchon v. Lehman*, 273 F.3d 299, 321 (3d Cir. 2001).

Biggins next argues that the court erred by finding his claims procedurally barred because the exhaustion requirement is satisfied where no further state court remedies are available. Biggins is correct that the exhaustion requirement is deemed satisfied if state court review of his claims is no longer available. Even so, such claims are procedurally barred from federal habeas review absent a showing of cause and prejudice or a fundamental miscarriage of justice. *Lines v. Larkins*, 208 F.3d 153, 160 (3d Cir. 2000), *cert. denied*, 531 U.S. 1082 (2001).

Finally, it appears that Biggins asks the court to reconsider its decision not to issue a

certificate of appealability. For the reasons set forth in detail in its prior order, the court remains

convinced that reasonable jurists would not debate its decision to deny Biggins' habeas petition.

See Slack v. McDaniel, 529 U.S. 473, 484 (2000). The court will not issue a certificate of

appealability.

In short, Biggins has not presented any reason warranting reconsideration of the court's

order denying his habeas petition. To the extent that Biggins suggests that the court committed a

clear error of law, the court is unpersuaded. His motion for reconsideration will be denied.

III. **CONCLUSION**

For the foregoing reasons, IT IS HEREBY ORDERED THAT Biggins' Motion for

Rehearing (D.I. 48) is treated as Rule 59(e) motion for reconsideration, and so treated, is

DENIED.

IT IS SO ORDERED.

Dated: September 23, 2002

Gregory M. Sleet UNITED STATES DISTRICT JUDGE

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