

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	Case No. 1:12CR00038-1
	)	
v.	)	<b>OPINION AND ORDER</b>
	)	
<b>GREGORY BRANDON HOLT,</b>	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

*Gregory Brandon Holt, Pro Se Defendant.*

The defendant, proceeding pro se, filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255, alleging his counsel failed to appeal the criminal judgment as he instructed. The court conditionally filed the motion, advised Holt that the motion appeared untimely, and gave him the opportunity to explain why the court should consider the motion timely filed. On November 12, 2014, I dismissed the motion as untimely filed after reviewing Holt's response.

On December 1, 2014, the court received Holt's motion for reconsideration of the dismissal of his Motion to Vacate, Set Aside, or Correct Sentence. Holt argues that the dismissal of the motion constitutes manifest injustice and was clear error because a defendant is entitled to a belated appeal if counsel promises to note an appeal and then fails to do so. Holt further argues that he acted with due

diligence by waiting for counsel to tell him whether an appeal was filed. Holt asks me to reconsider denying him a certificate of appealability and to permit an evidentiary hearing to determine whether counsel failed to file a notice of appeal as instructed.

I treat the motion for reconsideration as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) because it was filed within twenty-eight days of the dismissal order. *Dove v. CODESCO*, 569 F.2d 807, 809 (4th Cir. 1978). There are three grounds to alter or amend a judgment under Rule 59(e): “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998). None of the arguments in the motion for reconsideration describe a clear error of law or manifest injustice. Holt still does not establish that he pursued his Motion to Vacate, Set Aside, or Correct Sentence within a year of when he could have discovered whether an appeal was filed through the exercise of due diligence. Consequently, a certificate of appealability and an evidentiary hearing are not warranted.

Accordingly, it is hereby **ORDERED** that Holt's motion for reconsideration (ECF No. 60) is DENIED.

ENTER: December 10, 2014

/s/ James P. Jones  
United States District Judge