IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TYREE MILLER,	:	
Petitioner,	:	
	:	**Criminal No. 14-0648**
v.	:	**Civil No. 19-4461**
	:	
UNITED STATES OF AMERICA,	:	
Respondent.	:	

MEMORANDUM

Petitioner, Tyree Miller, moves this Court to reconsider its denial of Petitioner's motion to vacate his conviction pursuant to 28 U.S.C. § 2255, and seemingly in the alternative, to grant Petitioner leave to correct or amend his motion to vacate in order to argue that he was actually innocent of the underlying offense and that he received ineffective assistance of counsel. ECF No. 34.

"The scope of a motion for reconsideration . . . is extremely limited." *Taggart v. Wells Fargo Bank, N.A.*, No. 16-0063, 2017 WL 3217396, at *1 (E.D. Pa. July 28, 2017) (citing *OR v. Hutner*, 576 Fed. Appx. 106, 110 (3d Cir. 2014)) (quotations and citations omitted). "Such motions are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence." *Id.* (citations and quotations omitted). A motion for reconsideration "may be granted if the moving party shows: '(1) an intervening change in controlling law; (2) the availability of new evidence that was not available when the court initially issued its order; or (3)

the need to correct a clear error of law or fact or to prevent manifest injustice.'" *Id.* (quoting *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)).

Petitioner does not argue any of the permissible grounds is present in this case to warrant the Court to reconsider its denial of Petitioner's motion to vacate. Indeed, Petitioner does not state, nor can he, that there has been an intervening change in controlling law, that new evidence has become available since the Court denied his motion, or that there is any need to correct a clear error of law or fact or to prevent manifest injustice. Even according Petitioner due leniency in light of his *pro se* status in this matter, the Court is unaware of any ground for reconsideration in this matter.

As to Petitioner's alternative request, that he be permitted to "correct or amend" his motion to vacate to "show the supporting argument for the petitioner being actually innocent and that he received ineffective assistance of counsel," the Court sees no permissible ground to grant Petitioner leave to submit a successive motion under 28 U.S.C. § 2255. Section 2255 states, in pertinent part, that a "second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain – (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of

constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h).

Petitioner has not requested certification as provided in § 2244 in order to permit him to file a successive motion. Moreover, even if Petitioner was procedurally permitted under the rules to "correct or amend" his motion to vacate, this Court has already found neither of the arguments Petitioner requests to "add" to his motion persuasive. Indeed, the Court noted that even if Petitioner had raised an ineffective assistance of counsel claim, the Court would find it unpersuasive for the reasons articulated in its memorandum. ECF No. 32 at pp. 11-12. And further, the Court found in no uncertain terms that Petitioner could not make a threshold showing of actual innocence. *Id.* at p. 32 ("However, Petitioner's claim of innocence flies in the face of the existing record.").

For the foregoing reasons, Petitioner's Motion for Reconsideration and to Correct or Amend Petitioner's Motion to Vacate His Conviction (ECF No. 34) will be denied. An appropriate order will follow.

DATED: 1-30-2020

BY THE COURT:

CHAD F. KENNEY, J.

cc: U.S. Attorney (ECF)
Pro Se Petitioner (Postal Mail)

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	:	
UNITED STATES OF AMERICA,	:	
Respondent.	:	

ORDER

AND NOW, on this 30th day of January 2020, upon consideration of Petitioner's Motion for Reconsideration and to Correct or Amend Petitioner's Motion to Vacate His Conviction (ECF No. 34), and in accordance with the accompanying memorandum, it is hereby **ORDERED** that Petitioner's Motion for Reconsideration and to Correct or Amend Petitioner's Motion to Vacate His Conviction (ECF No. 34) is **DENIED**.

BY THE COURT:

CHAD F. KENNEY, J.

CC: U.S. Attorney (ECF)
Pro Se Petitioner (postal mail)