

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 07-10359  
\_\_\_\_\_

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPT 19, 2008 THOMAS K. KAHN CLERK
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D. C. Docket Nos. 06-01964 CV-T-24-MSS  
03-00249-CR-T-24-MSS

DAVID O. EDWARDS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Middle District of Florida  
\_\_\_\_\_

**(September 19, 2008)**

Before DUBINA, HULL and FAY, Circuit Judges.

PER CURIAM:

Appellant David O. Edwards (“Edwards”), a federal prisoner, appeals the district court’s *sua sponte* denial of his 28 U.S.C. § 2255 motion as time barred and the district court’s subsequent denial of his Fed. R. Civ. P. 59(e) motion to set aside the judgment.

In a 28 U.S.C. § 2255 proceeding, we review a district court’s findings of fact for clear error and its conclusions of law de novo. *Garcia v. United States*, 278 F.3d 1210, 1212 (11th Cir. 2002).

“The decision to alter or amend a judgment is committed to the sound discretion of the district court.” *Drago v. Jenne*, 453 F.3d 1301, 1305 (11th Cir. 2006). Thus, we review the district court’s denial of a Fed. R. Civ. P. 59(e) motion for an abuse of discretion. *Id.*

After reviewing the record, reading the parties’ briefs, and having the benefit of oral argument, we hold that the district court did not err in finding that Edwards’s 28 U.S.C. § 2255 motion was untimely. Because the district court found that Edwards’s petition for writ of certiorari in the Supreme Court was untimely, the petition did not toll the time for filing his § 2255 motion. Second, we hold that the district court did not abuse its discretion in denying Edwards’s Fed. R. Civ. P. 59(e) motion because he failed to meet the standard for relief under the Rule. Specifically, Edwards did not demonstrate that the documents he

attached to his Rule 59(e) motion had been unavailable to him prior to the denial of his § 2255 motion. Because we conclude that there is no merit to any of the arguments Edwards makes in this appeal, we affirm the district court's judgment denying Edwards's § 2255 motion and the order denying his Rule 59(e) motion to set aside the judgment.

**AFFIRMED.**