

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LOUIS MATTHEW CLEMENTS,

Petitioner,

v.

Case No: 2:17-cv-396-FtM-38CM

STATE OF FLORIDA, FLORIDA
ATTORNEY GENERAL and
SECRETARY, DOC,

Respondents.

OPINION AND ORDER¹

This matter comes before the Court on Petitioner's Motion to Reconsider Motion for Temporary Restraining Order ([Doc. 31](#)) filed on May 21, 2018. Petitioner seeks reconsideration of the Court's November 7, 2017 Order ([Doc. 14](#)) denying Petitioner's motion for a preliminary injunction. On April 2, 2018, the Eleventh Circuit Court of Appeals denied Petitioner's request to proceed in forma pauperis on his interlocutory appeal of the Court's November 7, 2017 Order. See [Doc. 28](#).

Petitioner does not identify on which rule he seeks reconsideration. See [Doc. 31](#). The Court construes the Motion as being brought pursuant to [Fed. R. Civ. P. 60](#) (b) since it was filed beyond 30 days of the November 7, 2017 Order. A filing of a notice of appeal

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divests a district court of jurisdiction over issues involved in the appeal except in limited circumstances. [Mahone v. Ray, 326 F.3d 1176, 1179 \(11th Cir. 2003\)](#). Federal Rule of Appellate Procedure 4(a)(4) grants this Court with jurisdiction only to dispose of a [Rule 60](#) motion if filed no later than 28 days after judgment is entered but before a notice of appeal effectively places jurisdiction in the Court of Appeals. See [Fed. R. App. P. 4\(a\)\(4\)\(A\)\(vi\)](#) and 4(a)(4)(B)(i); [Mahone, 326 F.3d at 1179](#). Here the Motion was filed beyond the 28 days limit and the Eleventh Circuit has dismissed Petitioner's appeal. See [Doc. 29](#). Consequently, the Court lacks jurisdiction to consider Petitioner's Motion.

Accordingly, it is now

ORDERED:

Petitioner's Motion to Reconsider Motion for Temporary Restraining Order ([Doc. 31](#)) is **DISMISSED**.

DONE and **ORDERED** in Fort Myers, Florida this 8th day of August 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1
Copies: All Parties of Record