

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

TED SMITH,

Petitioner,

v.

CASE NO. 1:11-cv-265-MP-GRJ

WILLIAM S. BAXTER,  
NFETC Administrator,  
and FRANK E. SHEFFIELD,  
Circuit Judge, Gadsden County,

Respondents.

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**ORDER**

Pending before the Court is Petitioner's "Motion to Vacate Void/ Judgment/ Order and Release Petitioner According to Federal Rule Civil Procedure 60(b)(4)." (Doc. 27.) Petitioner purports to request relief under Federal Rule of Civil Procedure 60(b)(4), and asserts that the judgment in his state case was void because the state court failed to obtain witnesses and prohibited witnesses and Petitioner from speaking. For the following reasons, the motion is due to be denied.

Initially, the Court notes that Petitioner has presented an identical claim in the instant motion as he presented in the original § 2254 petition. Accordingly, the Court will construe the purported motion under Rule (60)(b)(4) as a motion to amend Petitioner's pending motion under 28 U.S.C. § 2254 See *Gonzalez v. Crosby*, 545 U.S. 524, 530-531 (2005). Because the proposed amendment would offer no new legal arguments or evidence, Petitioner's motion for leave to amend is due to be denied.

Accordingly, it is hereby **ORDERED** that:

Petitioner's "Motion to Vacate Void/ Judgment/ Order and Release Petitioner According to Federal Rule Civil Procedure 60(b)(4)," Doc. 27, is **DENIED**.

**DONE AND ORDERED** this 28<sup>th</sup> day of December 2012.

*s/ Gary R. Jones*

GARY R. JONES  
United States Magistrate Judge