

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

DONALD FRANK SMITH,

Plaintiff,

v.

**WARDEN WILLIAM DANFORTH, et
al.,**

Defendants.

Civil Action No. 7:12-CV-23 (HL)

ORDER

Before the Court is Plaintiff's "Motion for Judgment or Order for Cross Summary Judgment" (Doc. 37), what is in effect a motion for reconsideration under Federal Rule of Civil Procedure 60(b). The motion is denied. Although Plaintiff filed a notice of appeal subsequent to filing the current motion but before this Court had ruled on it, "district courts retain jurisdiction after the filing of a notice of appeal to entertain and deny a Rule 60(b) motion." Mahone v. Ray, 326 F.3d 1176, 1180 (11th Cir. 2003). This is Plaintiff's second Rule 60(b) motion. (See Doc. 30). As with the first Rule 60(b) motion that was denied by this Court, Plaintiff has once again failed to show how his case falls within any of the bases for relief enumerated in Rule 60(b). Furthermore, Rules 39 and 40 address the proper docketing of cases involving jury demands and the scheduling of trials respectively, and provide no support for a motion to reconsider the judgment.

SO ORDERED, this the 31st day of October, 2013.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

scr