

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

ANTONIO T. SIMS,)
Petitioner,)
v.) No. 1:09-cv-763-WTL-JMS
THOMAS HANLON,)
Respondent.)

Entry Concerning Selected Matters

This action for habeas corpus relief brought by a state prisoner was dismissed without prejudice based on the petitioner's failure to have exhausted available remedies in the Indiana state court prior to filing the case. The petitioner's appeal from this disposition has been docketed in the Court of Appeals as No. 10-2103. The petitioner has now filed another post-judgment motion seeking relief from the disposition.

Having reviewed all such matters, and being duly advised, the court makes the following rulings:

1. The present motion (dkt 71) is **denied as untimely** if understood as a motion to alter or amend judgment pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure*.
2. Because the motion cannot be treated substantively pursuant to Rule 59(e), it will be treated as a motion for relief from judgment pursuant to Rule 60(b).
3. The timely filing of a notice of appeal typically divests the district court of jurisdiction over aspects of the case involved in the appeal. *Kusay v. United States*, 62 F.3d 192, 193-94 (7th Cir. 1995). However, a district court retains jurisdiction to take additional action in aid of the appeal, such as denying Rule 60(b) relief on the merits, despite the pendency of an appeal. *Chicago Downs Ass'n v. Chase*, 944 F.2d 366, 370 (7th Cir. 1991); *Textile Banking Co. v. Rentschler*, 657 F.2d 844, 849-50 (7th Cir. 1981). Many cases, including *United States v. Cronic*, 466 U.S. 648, 667 n.42 (1984), say that a district court may deny, but not grant, a post-judgment motion while an appeal is pending.

4. The petitioner's motion for relief from judgment (dkt 71) is **denied** because it does not show or suggest that available state court remedies have now been exhausted and does not otherwise establish any basis for relief from the disposition of the action.

IT IS SO ORDERED.

Date: 08/04/2010



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

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