

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

ANTHONY G. BAILEY (#297843)

VERSUS

CIVIL ACTION

BURL CAIN, ET AL

NUMBER 08-70-JJB-SCR

RULING ON MOTION FOR CERTIFICATE OF APPEALABILITY

Before the court is the petitioner's Motion for Certificate of Appealability. Record document number 48.

A review of the record showed that judgment was entered in this matter on September 17, 2008. On June 21, 2010, the United States Court of Appeals for the Fifth Circuit dismissed the petitioner's appeal of the original order denying habeas relief and affirmed the denial of his Rule 60(b) motion. *Anthony G. Bailey v. Burl Cain*, 609 F.3d 763 (5th Cir. 2010). The United States Supreme Court denied the petition for writ of certiorari. *Anthony G. Bailey v. Burl Cain*, \_\_\_ U.S. \_\_\_, 131 S.Ct. 931 (2011).

On August 30, 2010, the Clerk of Court received a pleading entitled Motion to Vacate Judgment Under F.R.C.P. Rule 60(b)(1), (2) and (6). On September 2, 2010, an order was entered instructing the Clerk of Court to return the pleading to the petitioner unfiled.<sup>1</sup>

On October 1, 2010, the petitioner filed a pleading captioned

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<sup>1</sup> Record document number 34.

as a Motion for Certificate of Appealability.<sup>2</sup> On October 5, 2010, the court ordered the Clerk of Court to docket the pleading as a notice of appeal of the court's September 2, 2010 order.<sup>3</sup> The court further instructed the Clerk of Court to return all pleadings to the petitioner without filing unless he has first obtained leave of court from a judicial officer to file the pleading.<sup>4</sup>

On October 14, 2011, the United States Court of Appeals for the Fifth Circuit dismissed the petitioner's appeal for lack of jurisdiction.<sup>5</sup>

On December 29, 2011, the petitioner filed a Motion for Leave From District Judge to File a Motion to Vacate Under F.R.C.P. Rule 60(b).<sup>6</sup>

On January 12, 2012, the district court denied his motion for leave of court to file a motion to vacate on grounds that the matter has been previously considered and rejected.<sup>7</sup>

On February 3, 2012, the petitioner filed a Notice of Appeal of the court's order entered January 12, 2012 denying his motion

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<sup>2</sup> Record document number 36.

<sup>3</sup> Record document number 37.

<sup>4</sup> *Id.*

<sup>5</sup> Record document number 44.

<sup>6</sup> Record document number 46.

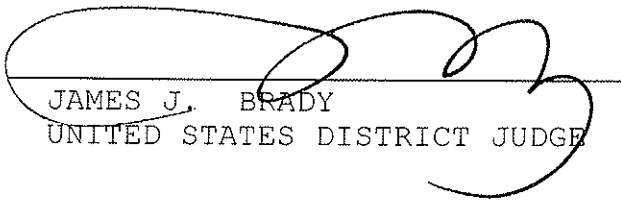
<sup>7</sup> Record document number 47.

for leave of court to file a motion to vacate<sup>8</sup> and this Motion for Certificate of Appealability.

Petitioner is seeking review of the district court's denial of his motion for leave of court to file another motion to vacate. A certificate of appealability is unnecessary.

Accordingly, the petitioner's Motion for Certificate of Appealability is denied as unnecessary.

Baton Rouge, Louisiana, February 8+4 2012.



JAMES J. BRADY  
UNITED STATES DISTRICT JUDGE

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<sup>8</sup> Record document number 48.