



Case No. 5:12-CV-2972  
Gwin, J.

present motion will be denied on the same grounds.

According to the Court's docket records, the Sixth Circuit has not issued an order regarding Petitioner's appeal. The case has been assigned an appellate case number; therefore, it appears that his appeal is still pending before the Sixth Circuit. Appellant has filed a brief; the State of Ohio has filed a motion to dismiss petitioner's appeal as improvidently granted.<sup>1/</sup><sup>2/</sup>

As such, the Court finds that it does not have jurisdiction to consider Petitioner Cook's motion. A notice of appeal generally "confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal."<sup>3/</sup>

Although the Sixth Circuit has established a procedure allowing a district court to address such motions by certifying its anticipated disposition of the motion in the event of remand by the court of appeals,<sup>4/</sup> it is equally within the district court's discretion to dismiss the motion and let the appeal take its course.<sup>5/</sup>

In the circumstances of this case, the Court declines to certify its anticipation disposition. Accordingly, the Court **DENIES** Petitioner Cook's Rule 60(b) motion for reconsideration for lack

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<sup>1/</sup>Doc. [23](#).

<sup>2/</sup>Doc. [21](#).

<sup>3/</sup>[Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 379 \(1985\)](#); see also [Pickens v. Howes, 549 F.3d 377, 383 \(6th Cir.2008\)](#) ("After an appeal of a trial court's final judgment has been perfected by the filing of a notice of appeal, the trial court no longer has jurisdiction to grant a Rule 60(b) motion." (citation omitted)).

<sup>4/</sup>See [First National Bank of Salem, Ohio v. Hirsch, 535 F.3d 343 \(6th Cir.1976\)](#).

<sup>5/</sup>See [Dunham v. United States, 486 F.3d 931, 935 \(6th Cir.2007\)](#).

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of jurisdiction.

IT IS SO ORDERED

Dated: August 25, 2014

*s/ James S. Gwin*  
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JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE