

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 28, 2022

Quincetta Y. Cargill
FDC SEATAC
PO BOX 13900
SEATTLE, WA 98198

Appeal Number: 22-10269-E
Case Style: Quincetta Cargill v. Alabama, State of, et al
District Court Docket No: 2:19-cv-01339-RDP-JHE

Electronic Filing

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The enclosed order has been ENTERED.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gloria M. Powell, E
Phone #: (404) 335-6184

MOT-2 Notice of Court Action

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10269-E

QUINCETTA Y. CARGILL,

Petitioner-Appellant,

versus

ALABAMA, STATE OF,
ATTORNEY GENERAL FOR THE STATE
OF ALABAMA, THE,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ORDER:

Quincetta Y. Cargill appeals the district court's order denying her Federal Rule of Civil Procedure 60(b) motion, "Motion Requesting Admission of Discovery," and "Motion to Amend and Make Additional Factual Findings under Rule 52(b)." Cargill now moves for a certificate of appealability ("COA"), leave to proceed on appeal *in forma pauperis* ("IFP"), to consolidate claims, and to supplement the record.

As background, Cargill filed her initial 28 U.S.C. § 2254 habeas corpus petition in August 2019. In July 2020, the district court denied the § 2254 petition as time-barred. Cargill filed several objections and motions to reconsider, which the district court denied.

In June 2021, Cargill filed a "Habeas Corpus Petition," which the district court denied because she had not received authorization from this Court to file a second or successive habeas

petition. In September 2021, Cargill filed a motion for relief from judgment and a motion to present new claims. The district court denied her motion, noting that it already had addressed similar arguments and found them to be unfounded. The court also denied her request to present new claims, stating that it previously had considered the same claims and determined that it was without jurisdiction to consider them.

In December 2021, Cargill filed the instant “Motion for Relief from Judgment pursuant to [Federal Rule of Civil Procedure] 60(b)(2)(6) Newly Discovered Evidence,” “Motion Requesting Admission of Discovery,” and “Motion to Amend and Make Additional Factual Findings under Rule 52(b)” (“December 2021 Motion”).

The district court denied Cargill’s motions. As to Cargill’s Rule 60(b) motion, the district court determined that the motion was without merit because Cargill did not put forth any new information in the motion that would warrant a different outcome. As to Cargill’s request to make additional fact findings under Rule 52(b), the court determined that the motion was untimely because it was filed more than 28 days after the entry of judgment in the case. Cargill filed a motion for a COA and for leave to proceed IFP on appeal, which the district court denied.

As an initial matter, a COA is not necessary in this appeal. Accordingly, Cargill’s motion for a COA is DENIED AS UNNECESSARY. *See generally* 28 U.S.C. § 2253(c)(1)(A), (B); *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004); *Sawyer v. Holder*, 326 F.3d 1363, 1364 n.3 (11th Cir. 2003).

As to her motion for leave to proceed on appeal IFP, Cargill cannot raise an issue of arguable merit regarding the dismissal of her December 2021 Motion. Federal Rule of Civil Procedure 60(b) permits reconsideration of a district court order or judgment based on a limited number of circumstances, and Cargill failed to demonstrate that any of those circumstances were

present that warranted relief. Instead, she simply reiterated arguments that she previously had made unsuccessfully, both to the district court and this Court, in multiple filings, which was insufficient to warrant Rule 60(b) relief. Additionally, the district court did not abuse its discretion in its denial of Cargill's request to make additional fact findings under Rule 52(b). Cargill's motion was filed more than 28 days after the entry of judgment and, therefore, was untimely. Thus, Cargill's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. *See Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1352 (11th Cir. 2021) (*en banc*).

Her motion for consolidation is DENIED as the actions do not "involve a common question of law or fact." Fed. R. Civ. P. 42(a)(2). Finally, Cargill's motions to supplement the record and to expand the record are DENIED because she has not shown that the proffered material would establish beyond any doubt the proper resolution of the pending issue.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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David J. Smith
Clerk of Court

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August 01, 2022

Clerk - Northern District of Alabama
U.S. District Court
Hugo L. Black United States Courthouse
1729 5TH AVE N
BIRMINGHAM, AL 35203

Appeal Number: 22-10269-E
Case Style: Quincetta Cargill v. Alabama, State of, et al
District Court Docket No: 2:19-cv-01339-RDP-JHE

The enclosed copy of the Clerk's Order of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Any pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gloria M. Powell, E
Phone #: (404) 335-6184

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10269-E

QUINCETTA Y. CARGILL,

Petitioner - Appellant,

versus

ALABAMA, STATE OF,
ATTORNEY GENERAL FOR THE STATE
OF ALABAMA, THE,

Respondents - Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Quincetta Y. Cargill has failed to pay the filing and docketing fees to the district court within the time fixed by the rules.

Effective August 01, 2022.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

QUINCETTA Y. CARGILL,)
v.)
Plaintiff,)
v.)
STATE OF ALABAMA, et al.,)
v.)
Respondents.)
Case No. 2:19-cv-01339-RDP-JHE

ORDER

Before the court is Petitioner Quincetta Y. Cargill's Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(2) and (6) and Motion Requesting Admission of Discovery. (Doc. 38 at 1-4). Cargill also moves the court to amend and make additional factual findings under Federal Rule of Civil Procedure 52(b). (Doc. 38 at 2).

Rule 60(b) states that the court may “relieve a party . . . from a final judgment, order, or proceeding for . . . newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)” or “any other reason that justifies relief.” FED. R. CIV. P. 60(b)(2), (6). Cargill previously filed a “motion to amend or make additional newly discovered claims” under Federal Rule of Civil Procedure 60(b)(2) and (6). (See Doc. 36). The court determined that the motion was without merit. (See Doc. 37). Cargill has not put forth any new information in the present motion that would warrant a different outcome. (See Doc. 38 at 1-4). Cargill’s motion is **DENIED**.

Rule 52(b) states that “[o]n a party’s motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly.” FED. R. CIV. P. 52(b). The court entered final judgment in this case on

June 16, 2020. (Doc. 12). Cargill's motion is dated November 28, 2021. (Doc. 38 at 20). Her motion is untimely and, in any event, without merit. Accordingly, Cargill's motion is **DENIED**.

DONE and **ORDERED** this January 11, 2022.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE