

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 07-23207-CV-DIMITROULEAS**

ROBERT J. SMITH, JR.,

Plaintiff,

v.

JEB BUSH, et al.,

Defendants.

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**ORDER DENYING MOTION TO REOPEN AND MOTION FOR NEW TRIAL**

Plaintiff has filed a Motion to Reopen [DE 238] and a Motion for New Trial [DE 240]. The final judgment in this case was entered on April 7, 2010 [DE 200] and the appeal of that judgment concluded on June 14, 2011, when the Eleventh Circuit dismissed Plaintiff's appeal because he failed to file an initial brief [DE 236].

Both Plaintiff's motions are untimely. To the extent that Plaintiff is seeking a new trial the motion is construed under Federal Rule of Civil Procedure 59. A motion under Rule 59 must be filed no later than twenty-eight days after the entry of judgment. Fed. R. Civ. P. 59(b). The judgment in this case was entered more than thirteen years ago. Even if construed as a motion for relief from judgment under Federal Rule of Civil Procedure 60, the motions are untimely. A Rule 60 motion must be filed within a reasonable time and if the motion is based on the grounds argued by Plaintiff, namely fraud or mistake, the motion must be filed no more than one year after the entry of judgment. Fed. R. Civ. P. 60(c). So, under either Rule 59 or Rule 60 the Plaintiff's Motions are untimely and will be denied.

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows that the Motion to Reopen [DE 238] and The Motion for New Trial [DE 240] are **DENIED** as untimely.

The Clerk is **DIRECTED** to mail a copy of this Order to Plaintiff at the address listed below.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 3rd day of October 2023.



WILLIAM P. DIMITROULEAS  
United States District Judge

cc:  
Counsels of Record

Robert J. Smith, Jr.  
DC #789293  
Graceville Correctional Facility  
Inmate Mail/Parcels  
5168 Ezell Road  
Graceville, FL 32440  
PRO SE

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 23-14207-H

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ROBERT J. SMITH, JR.,

Plaintiff - Appellant,

versus

JEB BUSH,  
Ex Governor,  
SHERIFF KEN MASCARA,  
LIEUTENANT HASILEY,  
FT. PIERCE POLICE DEPT.,  
et al.,  
ST. LUCIE COUNTY DETENTION CENTER, et al.,

Defendants - Appellees.

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Appeal from the United States District Court  
for the Southern District of Florida

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

Effective February 05, 2024.

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

FOR THE COURT - BY DIRECTION

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

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

February 05, 2024

Clerk - Southern District of Florida  
U.S. District Court  
400 N MIAMI AVE.  
MIAMI, FL 33128-1810

Appeal Number: 23-14207-H  
Case Style: Robert Smith, Jr. v. Jeb Bush, et al  
District Court Docket No: 1:07-cv-23207-WPD

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.

Clerk's Office Phone Numbers

General Information: 404-335-6100	Attorney Admissions: 404-335-6122
Case Administration: 404-335-6135	Capital Cases: 404-335-6200
CM/ECF Help Desk: 404-335-6125	Cases Set for Oral Argument: 404-335-6141

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

**Additional material  
from this filing is  
available in the  
Clerk's Office.**