

**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.

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 withing 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

No. 23-14207-H

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.

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

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

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
Case Administration: 404-335-6135
CM/ECF Help Desk: 404-335-6125

Attorney Admissions: 404-335-6122
Capital Cases: 404-335-6200
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.**