

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-60181
Summary Calendar

GARRY LEE,

Plaintiff-Appellant,

versus

ELZY J. SMITH, Circuit Judge Bolivar County;
JOHN L. PEARSON, Circuit Judge Bolivar County;
BROOKS ALEXANDER, County Attorney;
H.M. "MACK" GRIMMETT, Sheriff; EUGENE HALL,
Deputy; GEORGE T. KELLY, JR.; CHARLES DEPUTY,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:89-CV-250-D
- - - - -
November 10, 1998

Before EMILIO M. GARZA, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Garry Lee, Mississippi inmate # 39820, proceeding *pro se* and *in forma pauperis*, appeals from the district court's denial of his second Fed. R. Civ. P. 60(b) motion. Lee has also filed a motion for a preliminary injunction or a temporary restraining order. The motion is DENIED.

This court must examine the basis of its jurisdiction, *sua sponte* if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Cir. 1987). A postjudgment motion which challenges the underlying judgment, requests relief other than correction of a purely clerical error, and is served more than ten days after judgment is entered is treated as a motion under Fed. R. Civ. P. 60(b). *Harcon Barge Co. v. D & G Boat Rentals*, 784 F.2d 665, 667 (5th Cir. 1986)(en banc). Any motion alleging substantially the same grounds as a previous motion will be deemed successive, and any appeal based on such a motion is not reviewable by this court. *Charles L.M. v. Northeast Indep. Sch. Dist.*, 884 F.2d 869, 870 (5th Cir. 1989). When the time for notice of appeal on a plaintiff's initial Rule 60(b) motion has run, the filing of another such motion does not interrupt the running of the time for appeal and does not provide a second opportunity for appellate review. *Charles L.M.*, 884 F.2d at 870-71; see *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993).

Lee appealed the district court's denial of a successive motion filed under Fed. R. Civ. P. 60(b). The denial of the motion is not reviewable by this court. See *Charles L.M.*, 884 F.2d at 870-71; see *Latham*, 987 F.2d at 1203. Accordingly, the appeal is DISMISSED.

DISMISSED; MOTION DENIED.