UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ABU-ALI ABDUR' RAHMAN	)	
	)	
v.	)	No. 3:96-0380
	)	JUDGE CAMPBELL
RICKY BELL, Warden	)	DEATH PENALTY

ORDER

Pending before the Court is Petitioner's Application for Certificate of Appealability (Docket No. 269). For the reasons described herein, the Court is without jurisdiction to rule on the Application.

By Order (Docket No. 267) entered on November 27, 2001, the Court ruled that it was without jurisdiction to decide Petitioner's Rule 60(b) Motion because the Motion was a second or successive petition subject to 28 U.S.C. § 2244. The Court, accordingly, ordered the case transferred to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631 and In re Sims, 111 F.3d 45 (6th Cir. 1997).[1]

Petitioner's Application for Certificate of Appealability asks the Court to grant a certificate of appealability. See 28 U.S.C. §§ 2253(c); Fed. R. App. P. 22(b); Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). According to Petitioner:

> Specifically, a COA should issue because reasonable jurists could disagree (and have disagreed) with this Court's conclusions that: (1) Every 60(b) motion in a habeas case is a second or successive

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[1] The Court also notes that this case was on appeal at the time the Rule 60(b) Motion was filed in this Court and that it remains on appeal at this time. Therefore, the Court generally lacks jurisdiction over the case due to the appeal. See First Nat'l Bank of Salem, Ohio v. Hirsch, 535 F.2d 343 (6th Cir. 1976) regarding the procedure for a District Court to act on a Rule 60(b) motion to vacate a judgment that is on appeal.

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(270)

> petition; (2) Tennessee Supreme Court Rule 39 is a "new" rule of law; and (3) Abu-Ali Abdur'Rahman is not entitled to relief, despite egregious prosecutorial misconduct, including deliberate falsification of evidence pivotal to the death sentence.

Application, Docket No. 269, p. 1.

For the reasons stated in the prior Order (Docket No. 267), the Court finds that it does not have jurisdiction to rule on Petitioner's Application for Certificate of Appealability.

The Clerk shall send a copy of this Order to the Clerk of the Sixth Circuit Court of Appeals.

It is so ORDERED.

TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE