

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11268-P

CHRISTOPHER LEE PRICE,

Plaintiff-Appellant,

versus

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,
WARDEN, HOLMAN CORRECTIONAL FACILITY,

Defendants-Appellees.

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

Before TJOFLAT, WILSON, and ROSENBAUM, Circuit Judges.

BY THE COURT:

After we issued our opinion in this appeal affirming the district court's denial of Appellant Christopher Lee Price's motion for preliminary injunction, in which he sought to stay his execution, Price filed in the district court a new motion for preliminary injunction and, alternatively, for relief under Federal Rule of Civil Procedure 60(b). Price's new motion sought essentially the same relief as his first, but with additional supporting evidence. Price also filed in this appeal an Emergency Motion to Immediately Issue Mandate. He notes that the defendants oppose his motion in the district court and contend that the district court lacks jurisdiction to rule on it because we have not yet issued the mandate in this appeal. Consequently, Price requests

that we expedite issuance of the mandate to cure any jurisdictional issue in the district court and allow the district court to rule on his new motion for a preliminary injunction.

After Price filed his Emergency Motion to Immediately Issue Mandate, the district court granted Price's new motion for a preliminary injunction and entered a stay of execution for 60 days. The district court concluded that it had jurisdiction and found, among other things, that Price had a substantial likelihood of success on the merits, in light of the present evidentiary posture. The defendants have now moved us to vacate the district court's order, contending in part that the district court lacked jurisdiction to enter it.

The parties' pending motions before us raise substantial questions about our jurisdiction and the district court's jurisdiction. *See United States v. Diveroli*, 729 F.3d 1339, 1341-44 (11th Cir. 2013) (stating that a timely notice of appeal normally divests the district court of authority to proceed further with respect to any matters involved in the appeal, except in aid of the appeal); *Weaver v. Fla. Power & Light Co.*, 172 F.3d 771, 773 (11th Cir. 1999) (stating that a district court is not deprived of jurisdiction to rule on collateral matters not at issue on appeal); *Zaklama v. Mt. Sinai Med. Ctr.*, 906 F.2d 645, 649 (11th Cir. 1990) (stating that we retain jurisdiction over an appeal until the mandate has issued); *but see* Fed. R. App. P. (a)(4)(A)(vi) (noting that a motion for relief under Fed. R. Civ. P. 60 serves to toll the time to file a notice of appeal, if filed within 28 days of a judgment); Fed. R. App. P. 4(a)(4)(B)(i) ("If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered."); *Derks v. Dugger*, 835 F.2d 778, 779 (11th Cir. 1987) (holding that a motion for reconsideration of an order denying a preliminary injunction tolled the time for appealing from the order); *Stone v. INS*, 514 U.S. 386,

401 (1995) (“The pendency of an appeal does not affect the district court’s power to grant Rule 60 relief.”). In light of the jurisdictional questions raised by the parties’ motions, we STAY Price’s execution until further order of this Court.