

July 5, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10057
Summary Calendar

RONROYAL J. OWENS,
Petitioner-Appellant,

versus

NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:03-CV-1333
USDC No. 3:03-CV-1334

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Ronroyal J. Owens, Texas prisoner # 851492, moves this court for a certificate of appealability (COA) to appeal the denial of a FED. R. CIV. P. 60(b) motion. The Rule 60(b) motion was taken from the dismissal as time-barred of Owens's 28 U.S.C. § 2254 application challenging his convictions for indecency with a child and attempted aggravated sexual assault of a child under the age of fourteen.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

A COA is required for an appeal from "the final order in a habeas corpus proceeding." 28 U.S.C. § 2253(c)(1). The denial of Owens's Rule 60(b) motion is not such an order. See Gonzalez v. Crosby, 545 U.S. 524, 532 (2005); Dunn v. Cockrell, 302 F.3d 491, 492 (5th Cir. 2002). The motion for a COA is denied as unnecessary.

A district court's denial of a Rule 60(b) motion is reviewed for abuse of discretion. Warfield v. Byron, 436 F.3d 551, 555 (5th Cir. 2006). Owens argues that the district court erred by failing to find that he was prevented from filing his § 2254 application by a state-created impediment as in Egerton v. Cockrell, 334 F.3d 433, 437-39 (5th Cir. 2003). Rule 60(b) may not be used as a substitute for an appeal. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). As Owens has not shown that the district court abused its discretion by denying his Rule 60(b) motion, the judgment of the district court is affirmed.

MOTION FOR COA DENIED AS UNNECESSARY; AFFIRMED.