

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50343
Conference Calendar

BARTON LEE MURPHY,

Plaintiff-Appellant,

versus

HERNANDEZ, Dr, El Paso
County Jail Doctor,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-96-CV-116
- - - - -

April 19, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

Barton Lee Murphy, federal prisoner # 06034051, argues that the summary judgment for the defendant was improper and that the district court should not have denied his FED. R. CIV. P. 60(b) motion. Murphy also moves the court to allow him to supplement the record on appeal. Murphy's motion to supplement the record

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

on appeal is DENIED. *Topalian v. Ehrman*, 954 F.2d 1125, 1131-32 & n.10 (5th Cir. 1992).

Murphy noticed an appeal from the denial of the Rule 60(b) motion but not from the summary judgment. Murphy may not now challenge the summary judgment because the denial of a Rule 60(b) motion does not bring up the underlying judgment for review. *In re Ta Chi Navigation (Panama) Corp. S.A.*, 728 F.2d 699, 703 (5th Cir. 1984). As to the denial of his Rule 60(b) motion, we have reviewed the record and the briefs of the parties, and we AFFIRM. The district court's denial of the motion was not an abuse of discretion. *See Murphy v. Hernandez*, No. EP-96-CA-116-H (W.D. Tex. Apr. 15, 1997).

AFFIRMED; MOTION DENIED.