

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10307
Summary Calendar

LEPOLEON STARKS,

Petitioner-Appellant,

versus

GARY L. JOHNSON, Director,
Texas Department of Criminal
Justice, Institutional Division,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:98-CV-117-H

October 25, 1999

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Lepoleon Starks, Texas state prisoner # 543018, requests this court to grant him a certificate of appealability (COA) to appeal the district court's denial of his motion to file an out-of-time notice of appeal from the denial of his 28 U.S.C. § 2254 motion and to appeal the denial of his § 2254 motion as time-barred.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We find that the district court did not abuse its discretion in determining that Starks had failed to show excusable neglect for filing an untimely notice of appeal. Therefore, we DISMISS the appeal for lack of jurisdiction. See Halicki v. Louisiana Casino Cruises, Inc., 151 F.3d 465, 468 (5th Cir. 1998). Starks' motion for COA from the denial of his § 2254 motion is DENIED as moot.

APPEAL DISMISSED; DENY COA AS MOOT.