

June 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20139
Conference Calendar

THOMAS PALERMO,

Petitioner-Appellant,

versus

JANIE COCKRELL, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CV-501

Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Thomas Palermo, Texas prisoner #823316, moves for a certificate of appealability (COA) to appeal from the denial of his motion for relief pursuant to Fed. R. Civ. P. 60(b). No COA is required following the denial of Rule 60(b) relief. *Dunn v. Cockrell*, 302 F.3d 491, 492 (5th Cir. 2002), *cert. denied*, 123 S. Ct. 1208 (2003). Palermo's COA motion is DENIED as unnecessary.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Palermo contended in his Rule 60(b) motion that the notice of appeal he had filed in his underlying habeas corpus action was timely filed. We already had dismissed Palermo's appeal in the underlying action because the notice of appeal was untimely. The district court lacked jurisdiction to overturn this court's dismissal of Palermo's previous appeal via a grant of Palermo's Rule 60(b) motion. See *Lancaster v. Presley*, 35 F.3d 229, 232 (5th Cir. 1994).

COA DENIED; APPEAL DISMISSED. 5TH CIR. R. 42.2.