

August 15, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-40725  
Summary Calendar

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ROBERT DANIEL KEYS,

Petitioner-Appellant,

versus

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

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:02-CV-100  
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Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:\*

Robert Daniel Keys, Texas prisoner # 873144, filed a  
28 U.S.C. § 2254 application which the district court dismissed  
as time-barred. This court denied Keys's request for a  
certificate of appealability (COA) from the dismissal of that  
application. Keys subsequently filed in the district court a  
motion for relief from judgment pursuant to FED. R. CIV. P.  
60(b)(1). When the district court denied that motion, Keys filed  
a motion for rehearing by a three-judge panel, which the district

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\* 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this opinion should not be published and is not precedent except  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.

court also denied. Keys now seeks a certificate of appealability (COA) to appeal the district court's denial of his motion for rehearing by a three-judge panel.

Keys cites to no authority nor has any been found establishing his right to a three-judge panel rehearing of the denial of his Rule 60(b)(1) motion. As such, his motion was unauthorized. Keys thus has appealed from the denial of a meaningless, unauthorized motion. See United States v. Early, 27 3F.3d 140, 142 (5th Cir. 1994). Although the district court denied the motion on the merits, it should have denied the motion for lack of jurisdiction. Id. However, this court can and does affirm on the alternative basis. Id. Keys's request for a COA is denied as unnecessary. See 28 U.S.C. § 2253(c)(1)(A). Keys's motions for the appointment of counsel and for an en banc consideration of his COA motion are also denied. See FED. R. APP. P. 35(a); 5TH CIR. R. 35.6.

COA DENIED AS UNNECESSARY; AFFIRMED; MOTIONS FOR APPOINTMENT OF COUNSEL AND EN BANC CONSIDERATION DENIED.