

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 30, 2007

No. 06-10572
Summary Calendar

Charles R. Fulbruge III
Clerk

JEFFREY HESS

Petitioner-Appellant

v.

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. 3:97-CV-960

Before WIENER, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Jeffrey Hess, Texas prisoner # 696464, moves for a certificate of appealability (COA) to appeal the district court's order unfiled his Rule 60(b) motion for relief from judgment. As Hess is not seeking to appeal from the final order in a habeas proceeding, Hess does not need a COA. See 28 U.S.C. § 2253(c)(1). A COA is therefore denied as unnecessary. See *id.*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In 1994, Hess was convicted of aggravated sexual assault of a child. See *Hess v. Cockrell*, 281 F.3d 212, 214 (5th Cir. 2002). He was sentenced to 15-years imprisonment. *Id.* Hess's first 28 U.S.C. § 2254 petition challenging his conviction and sentence was filed in April 1997. See *id.* In October 1997, that § 2254 petition was dismissed as time-barred. See *id.* In 2002, this court found that the application of the time-bar was appropriate. *Id.* at 216. In the Rule 60(b) motion, filed in April 2006 and unfiled by the district court, Hess was attempting to challenge the October 1997 judgment dismissing his first § 2254 petition as time-barred. Hess's purported Rule 60(b) motion in a closed case was "a meaningless, unauthorized motion" with no statutory or legal basis. See, e.g., *United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). As such, this court lacks jurisdiction to entertain this appeal. See *id.*

In September 2006, this court denied Hess's third petition for leave to file a successive 28 U.S.C. § 2254 application and issued a sanctions warning. In re *Jeffrey Hess*, No. 06-10718 (5th Cir. Sept. 7, 2006) (unpublished). Because this appeal was pending prior to imposition of the sanctions warning, we decline to impose a monetary sanction at this time. However, Hess is again CAUTIONED that any future frivolous or repetitive filings in this court or in any court subject to this court's jurisdiction will subject him to sanctions.

COA DENIED AS UNNECESSARY; APPEAL DISMISSED; SANCTIONS WARNING ISSUED.