

February 23, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-20679  
Summary Calendar

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RICHARD BAGGETT

Petitioner - Appellant

v.

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

Respondent - Appellee

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Appeals from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CV-1277  
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Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:\*

Richard Baggett, Texas prisoner # 507596, appeals the denial of FED. R. CIV. P. 60(b) relief and moves for a certificate of appealability (COA) and permission to proceed in forma pauperis (IFP) to challenge the district court's transfer order construing his 28 U.S.C. § 2254 petition challenging his aggravated sexual assault conviction as successive. He has also moved for a three-judge panel.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court's transfer order that Baggett seeks to challenge is a non-appealable interlocutory order. See Brinar v. Williamson, 245 F.3d 515, 517-18 (5th Cir. 2001). Therefore the district court did not abuse its discretion in denying Rule 60(b) relief. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). Because this case presents only Baggett's appeal from the denial of his Rule 60(b) motion and is not an appeal from the merits of his habeas petition, no COA is required. See Dunn v. Cockrell, 302 F.3d 491, 492 (5th Cir. 2002).

AFFIRMED; COA DENIED AS UNNECESSARY; IFP DENIED; MOTION FOR THREE-JUDGE PANEL DENIED AS MOOT.