

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 22, 2012

Lyle W. Cayce
Clerk

No. 11-50453
Summary Calendar

ROGELIO MIRANDA BACA,

Petitioner-Appellant

v.

THE STATE OF TEXAS,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:08-CV-36

Before KING, JOLLY, and GRAVES, Circuit Judges.

PER CURIAM:*

Rogelio Miranda Baca, Texas prisoner # 1218867, filed through counsel a 28 U.S.C. § 2254 application in which he claimed that he received ineffective assistance of trial counsel with respect to his Texas conviction and sentence for possession of heroin. The district court denied the application, and this court dismissed Baca's appeal from that decision on jurisdictional grounds because his pro se notice of appeal was untimely. *See Baca v. Texas*, No. 11-50216 (5th Cir. Oct. 5, 2011). Baca's instant appeal is from the district court's denial of his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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motion for late filing of a notice of appeal and the denial of his motion for reconsideration of that decision. He also moves for the appointment of counsel.

In his pro se appellate brief, Baca reiterates claims of ineffective assistance of trial counsel that were raised in his § 2254 application and contends for the first time that he received ineffective assistance from his counsel in his § 2254 proceedings in the district court; his right of access to the courts has been denied; and he has been subjected to cruel and unusual punishment. Given the earlier dismissal of his appeal from the district court's denial of his § 2254 application, Baca's arguments concerning his § 2254 claims are not considered here. Additionally, we will not consider the claims he attempts to raise for the first time in this appeal. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999).

Baca's opening brief lacks any argument challenging the district court's denial of his motion for late filing of a notice of appeal. He has thus waived the issue. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993) (recognizing that we generally will not consider arguments presented for the first time in a reply brief). In any event, Baca has not shown that he met the requirements of Federal Rule of Appellate Procedure 4(a)(5)(A)(i) or (a)(6)(A) and thus has not demonstrated that the district court abused its discretion in denying his motions. *See Resendiz v. Dretke*, 452 F.3d 356, 358-62 (5th Cir. 2006). Baca's motion for appointment of counsel is denied.

AFFIRMED; MOTION DENIED.