

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

No. 15-30578
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 27, 2016

Lyle W. Cayce
Clerk

JOSEPH SAM,

Petitioner-Appellant

v.

JERRY GOODWIN, WARDEN, DAVID WADE CORRECTIONAL CENTER,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:11-CV-713

Before CLEMENT, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Joseph Sam, Louisiana prisoner # 374631, was found guilty of possession with intent to distribute cocaine. *See Sam v. Louisiana*, 409 F. App'x 758, 760 (5th Cir. 2011). His conviction was affirmed on appeal. *Id.* at 760. On April 23, 2015, Sam filed a pro se motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6), challenging the district court's denial of his prior attorney-prepared Rule 60(b) motion for relief from judgment. He

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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argued that the attorney who presented his previous Rule 60(b) motion made fraudulent representations to the court. The district court denied Sam's Rule 60(b) motion.

Before he can appeal the denial of his motion under Rule 60(b) of the Federal Rules of Civil Procedure, Sam must obtain a COA. *See Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007). The district court did not determine whether Sam was entitled to a COA. Because the district court has not issued a COA ruling, we assume without deciding that we lack jurisdiction over the appeal. *See* Rule 11(a), RULES GOVERNING § 2254 PROCEEDINGS; *Cardenas v. Thaler*, 651 F.3d 442, 444 & nn.1-2 (5th Cir. 2011). Nevertheless, we decline to remand this case to the district court for a COA ruling because the appeal is frivolous, and a remand would be futile. *See United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000).

Accordingly, the appeal is DISMISSED for lack of jurisdiction, and Sam's motion for a COA is DENIED AS MOOT.

We denied Sam's two prior Rule 60(b) motions for relief from judgment seeking to overturn the denial of his motion for authorization to file a successive 28 U.S.C. § 2254 application. *See Sam v. Louisiana State*, No. 12-30834 (5th Cir. July 3, 2013); *Sam v. Louisiana State*, No. 14-30742 (5th Cir. Mar. 5, 2015). In our most recent order, we warned Sam "that any future frivolous or repetitive filings in this court or any court subject to this court's jurisdiction will invite sanctions." The instant motion is frivolous and repetitive. Accordingly, Sam is ORDERED to pay a monetary sanction in the amount of \$100.00, payable to the Clerk of this court. The Clerk is directed not to accept for filing from Sam any motion or any other pleading challenging his conviction and sentence, until this sanction is paid unless he first obtains the permission of this court or the forum court. We WARN Sam that future

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frivolous, repetitive, or otherwise abusive challenges to this conviction and sentence in this court or any court subject to this court's jurisdiction will subject him to additional and progressively more severe sanctions.