

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

No. 17-50483

United States Court of Appeals
Fifth Circuit

FILED

May 31, 2018

Lyle W. Cayce
Clerk

CEDRIC CHARLES FIGGS,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:16-CV-610

Before SMITH, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:*

Cedric Charles Figgs, Texas prisoner # 1738858, filed a second 28 U.S.C. § 2254 application challenging his 2011 conviction for burglary of a habitation enhanced by prior felony convictions and resultant life sentence. The district court determined that the habeas application was successive and unauthorized, and it transferred the matter to this court for further proceedings. Figgs seeks a certificate of appealability (COA) to appeal the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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district court's denial of his Federal Rule of Civil Procedure 60(b)(4) motion attacking the transfer order.

In his Rule 60(b)(4) motion, Figgs argued that the district court erred by finding his application successive without ordering the State to respond and address his issues. We review de novo a district court's ruling on a request for relief under Rule 60(b)(4). *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998). Not requiring the State to answer Figgs's second § 2254 application did not deprive him of notice or the opportunity to be heard to the extent that it rendered the transfer order void. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010).

To the extent that Figgs is required to obtain a COA, he has not shown that reasonable jurists could conclude that the district court erred in denying the Rule 60(b)(4) motion. *See Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011). Accordingly, his request for a COA is DENIED. To the extent that he does not need a COA, the order of the district court is AFFIRMED. Figgs's motions for leave to proceed in forma pauperis on appeal and for the appointment of counsel are also DENIED.