

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7072

Summary Calendar

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FREDDIE L. LYTAL,

Petitioner-Appellant,

versus

EDWARD HARGETT, Superintendent,  
Mississippi State Penitentiary

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(CA EC91-34-D-D)

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(April 22, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Freddie Lytal filed a habeas petition in 1991. The district court denied relief. Lytal filed a "motion for rehearing," which the district judge construed as a Rule 60(b) motion and denied. Lytal appealed the denial of that motion. This court dismissed the appeal in an unpublished opinion. Lytal then filed a second Rule 60(b) motion, asking the district judge to vacate the original

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

judgment because his failure to make a timely notice of appeal was due to mistake, inadvertence or excusable neglect. The district judge denied the motion and Lytal appealed.

The state contends we should dismiss Lytal's appeal as an effort to make an untimely appeal of the district judge's original denial of habeas relief. Lytal's second 60(b) motion did not focus on the merits of his habeas claim, instead arguing that Lytal's mistakes that led to the dismissal of his first appeal constitute a ground for 60(b) relief. His appeal from that new argument was timely taken.

We review the district court's treatment of a Rule 60(b) motion for abuse of discretion. See *Seven Elves v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. Unit A Jan. 1981) (listing relevant factors). We find no abuse of discretion in the court's assessment of this case.

AFFIRMED