

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-40146  
Conference Calendar

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BERNIE LAZAR HOFFMAN,

Petitioner-Appellant,

versus

N. L. CONNER, Superintendent of FCI  
at Texarkana, Texas; UNITED STATES PAROLE  
COMMISSION, United States Parole Commission,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 5:97-CV-311  
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February 17, 2000

Before EMILIO M. GARZA, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Bernie Lazar Hoffman appeals the district court's denial of his petition for habeas corpus under 28 U.S.C. § 2241 and the district court's denial of his motion for "reconsideration." Because the notice of appeal was not filed within sixty days of entry of the district court's judgment and Hoffman did not move for an extension of time to appeal, this court is without jurisdiction to review the district court's denial of the habeas petition. See Fed. R. App. P. 4(a)(1)(B), (a)(5)(A). The appeal from the denial of the petition for habeas corpus is DISMISSED.

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\* Pursuant to 5<sup>TH</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

Hoffman's motion for reconsideration is construed as a Fed. R. Civ. P. 60(b) motion, the denial of which we review for abuse of discretion. Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8 (5<sup>th</sup> Cir. 1991). The only issue raised in Hoffman's motion concerned his claim that the district court that sentenced him violated Fed. R. Crim. P. 32 by failing to append Hoffman's objections to the presentence report and the court's factual findings on the same to the presentence report. This claim concerns a nonconstitutional sentencing issue that is not cognizable in § 2241. See Ojo v. INS, 106 F.3d 680, 683 (5th Cir. 1997). The district court did not abuse its discretion in denying the Rule 60(b) motion.

AFFIRMED.