

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

No. 13-10978
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 29, 2014

Lyle W. Cayce
Clerk

MARCUS DWAYNE MAYBERRY,

Petitioner-Appellant

v.

WILLIAM STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CV-2592

Before REAVLEY, JONES, and PRADO, Circuit Judges.

PER CURIAM:*

Marcus Dwayne Mayberry, Texas prisoner # 605575, filed a motion in the district court pursuant to Federal Rule of Civil Procedure 60(b) challenging this court's dismissal of his appeal in *Mayberry v. Thaler*, No. 13-10077. The district court denied his motion, finding that his appeal was still pending.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Mayberry is correct that, at the time of the district court's ruling, his appeal in No. 13-10077 had already been dismissed. Nevertheless, Mayberry's motion, which was filed in his closed 28 U.S.C. § 2254 proceeding and which challenged an order of this court, was a "meaningless, unauthorized motion" over which the district court had no jurisdiction. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). As the district court was without jurisdiction to rule on the motion, we do not address Mayberry's argument that the failure to reinstate his appeal violates his due process rights. The district court's denial of his motion is AFFIRMED.

In *Mayberry v. Stephens*, No. 12-11226 (5th Cir. Feb. 20, 2014), we warned Mayberry that he could face sanctions if he continued to file repetitious and frivolous filings requesting free copies of court records. Our warning in this appeal is broader as we now WARN Mayberry that if he files any further frivolous filing, he could face sanctions, including dismissal, monetary sanctions, or restrictions on his ability to file pleadings in this court or any court subject to this court's jurisdiction.