

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 10, 2023

Lyle W. Cayce  
Clerk

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No. 23-20308

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JOSE ROJAS-MELITON,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director,*  
*Texas Department of Criminal Justice, Correctional Institutions Division,*

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:22-CV-537

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Before SMITH, SOUTHWICK, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Jose Rojas-Meliton, Texas prisoner # 02149143, was convicted of aggravated sexual assault of a child. He currently appeals the district court's denial of his motion under Federal Rule of Appellate Procedure 4(a)(6) to reopen the appeal period for the denial of his 28 U.S.C. § 2254 application.

Because Rojas-Meliton's motion to reopen was filed under Rule

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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4(a)(6), his motion for a certificate of appealability is DENIED as unnecessary. *See Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007); *Dunn v. Cockrell*, 302 F.3d 491, 492 (5th Cir. 2002). We dispense with further briefing because this appeal may be resolved on the available record.

The district court did not abuse its discretion when it denied Rojas-Meliton's motion to reopen. *See In re Jones*, 970 F.2d 36, 39 (5th Cir. 1992). Rojas-Meliton does not satisfy Rule 4(a)(6)(A) because his counsel received notice of the denial of his application within 21 days of judgment. *See Perez v. Stephens*, 784 F.3d 276, 283 (5th Cir. 2015). Additionally, we reject Rojas-Meliton's argument that his counsel abandoned him and that such abandonment warranted an exception to Rule 4(a)(6)(A)'s strictures. *See id.* at 283–84; *Resendiz v. Dretke*, 452 F.3d 356, 361–62 (5th Cir. 2006); *see also Bowles v. Russell*, 5511 U.S. 205, 208, 214 (2007).

The denial of the motion to reopen is AFFIRMED.