

United States Court of Appeals for the Fifth Circuit

No. 25-40747
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 23, 2026

Lyle W. Cayce
Clerk

BRANDON EARL CROCKER,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:23-CV-408

Before CLEMENT, HAYNES, and RAMIREZ, *Circuit Judges.*

PER CURIAM:*

Brandon Earl Crocker, Texas prisoner # 2333098, appeals the district court's dismissal of his 28 U.S.C. § 2254 application as untimely and the denial of his motion for relief from the judgment pursuant to Federal Rule of Civil Procedure 60(b). He also moves for the appointment of counsel.

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

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We lack jurisdiction to review the dismissal of Crocker's § 2254 application because he failed to file a timely notice of appeal from the underlying judgment. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 19–20 (2017); *Bailey v. Cain*, 609 F.3d 763, 767 (5th Cir. 2010). Although Crocker timely appealed from the district court's denial of his Rule 60(b) motion, the certificate of appealability (COA) issued by the district court is a defective procedural-only COA. *See Pierre v. Hooper*, 51 F.4th 135, 137 (5th Cir. 2022) (per curiam). Moreover, we decline to issue a valid COA in its place given that Crocker cannot satisfy the statutory requirements for issuance of a COA as to the district court's denial of his Rule 60(b) motion. *See id.* at 137–39; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Hernandez v. Thaler*, 630 F.3d 420, 428–431 (5th Cir. 2011) (per curiam).

Accordingly, the COA is VACATED, the appeal is DISMISSED, and Crocker's motion for the appointment of counsel is DENIED.