IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-30312

HERBERT BUTLER,

Petitioner–Appellant,

versus

DARREL VANNOY, Warden, Louisiana State Penitentiary,

Respondent–Appellee.

Appeals from the United States District Court
for the Middle District of Louisiana
USDC No. 3:98-CV-184

Before JONES, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:[*]

Herbert Butler, Louisiana prisoner # 124959, was convicted of second-

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[*] 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 16-30312

degree murder and sentenced to imprisonment for life. He moves for a certificate of appealability ("COA") and for leave to proceed *in forma pauperis* ("IFP") to challenge the denial of his motion for permission to file a Federal Rule of Civil Procedure 60(b)(6) motion. That proposed motion sought to challenge a state appellate court's finding that Butler had failed to preserve a particular issue for review on direct appeal.

Because the proposed motion does not address any aspect of the denial of Butler's 28 U.S.C. § 2254 application, it raises new claims, so it is a successive Section 2254 application. *See Gonzalez v. Crosby*, 545 U.S. 524, 532–33 (2005). Because Butler did not have this court's permission to file a second or successive application, the district court did not have jurisdiction to consider it. *See In re Sepulvado*, 707 F.3d 550, 556 (5th Cir. 2013). Therefore, the appeal is DISMISSED. *See United States v. Key,* 205 F.3d 773, 774–75 (5th Cir. 2000).

To the extent that Butler is required to obtain a COA, his request is DENIED, because he has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, his motion for leave to proceed IFP on appeal also is DENIED.