

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

United States Court of Appeals
Fifth Circuit

FILED

January 15, 2010

No. 09-10452
Summary Calendar

Charles R. Fulbruge III
Clerk

JOE ROBERT PATRON,

Petitioner-Appellant

v.

RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISON,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CV-82

Before KING, STEWART, and HAYNES, Circuit Judges.

PER CURIAM:*

Joe Robert Patron, Texas prisoner # 1176158, seeks a certificate of appealability (COA) from the dismissal of his petition for writ of audita querela, in which he challenged his conviction and sentence for aggravated sexual assault of a child. A COA is not required for Patron to appeal. *See* 28 U.S.C. § 2253(c).

We may affirm the district court's judgment on any basis supported by the record. *See Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir. 2000) (denial of § 2255

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion). The district court correctly dismissed Patron's petition for writ of audita querela because redress was available to Patron under 28 U.S.C. § 2254. *See United States v. Banda*, 1 F.3d 354, 356 (5th Cir. 1993); *Tolliver v. Dobre*, 211 F.3d 876, 878 (5th Cir. 2000); *see also Felker v. Turpin*, 518 U.S. 651, 662 (1996). It is irrelevant that Patron can no longer meet the standard for bringing a timely § 2254 petition. *Cf. Tolliver*, 211 F.3d at 878 (holding that fact that federal prisoner filed unsuccessful 28 U.S.C. § 2255 motion or that federal prisoner cannot meet requirements for filing successive § 2255 motion does not render § 2255 remedy unavailable).

Accordingly, Patron's motion for a COA is DENIED as unnecessary and the judgment of the district court is AFFIRMED.