

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

United States Court of Appeals
Fifth Circuit

F I L E D

October 28, 2009

No. 09-20064
Summary Calendar

Charles R. Fulbruge III
Clerk

NORMAN CRITTENDEN

Petitioner-Appellant

v.

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

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:07-CV-3940

Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Norman Crittenden, Texas prisoner # 499806, moves for a certificate of appealability (COA) to appeal from the district court's order denying him habeas corpus relief, pursuant to 28 U.S.C. § 2254. Crittenden challenges the use of an Illinois conviction to enhance the sentence for his 1993 Texas conviction of possession of a deadly weapon in a penal institution.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

A COA may be issued only if the applicant has “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). However, Crittenden’s COA motion is denied because this court lacks jurisdiction to consider it. The latest date on which Crittenden could have filed a timely notice of appeal was January 16, 2009, 30 days from the district court’s December 17, 2008, order denying Crittenden’s first postjudgment motion for relief. *See FED. R. APP. P. 4(a)(1), (a)(4)(A)(iv).* Crittenden’s second postjudgment motion had no tolling effect on the period for filing a timely notice of appeal. *See Charles L.M. v. Northeast Indep. Sch. Dist.*, 884 F.2d 869, 870 (5th Cir. 1989). Crittenden’s January 26, 2009, notice of appeal was untimely, and this court lacks jurisdiction to address his COA motion.

COA DENIED. APPEAL DISMISSED. MOTION FOR APPOINTMENT OF COUNSEL DENIED.