

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

United States Court of Appeals  
Fifth Circuit

**FILED**

November 17, 2010

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No. 10-10514  
Summary Calendar

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Lyle W. Cayce  
Clerk

ERVIN STERLING BROWN, JR.,

Petitioner–Appellant,

v.

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

Respondent–Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:10-CV-22

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Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:\*

Ervin Sterling Brown, Jr., formerly Texas prisoner # 559314, moves for a certificate of appealability (COA) to appeal from the order of the district court denying his application for habeas corpus relief pursuant to 28 U.S.C. § 2254. Brown challenges a May 7, 2009, prison disciplinary hearing at which he was found guilty of extorting property from another prisoner. Brown also moves for appointment of counsel; that motion is denied.

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 10-10514

Brown was released from prison after the district court denied his habeas application. He had served his 20-year sentence at the time of his release. His case no longer presents a case or controversy, and we lack jurisdiction to consider his appeal. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

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