

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 14, 2011

No. 10-30958
Summary Calendar

Lyle W. Cayce
Clerk

ANTHONY G. BAILEY,

Petitioner-Appellant

v.

BURL CAIN, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:08-CV-70

Before WIENER, STEWART, and HAYNES, Circuit Judges.

PER CURIAM:*

Petitioner-Appellant Anthony G. Bailey, Louisiana prisoner #297843, filed a petition pursuant to 28 U.S.C. § 2254, challenging his jury trial conviction of attempted second degree murder in state court. Bailey now appeals the district court's order directing the clerk to return a pleading unfiled, following its September 17, 2008 dismissal as time barred. Bailey contends that the district court unconstitutionally denied his access to the courts and also erred in not

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 10-30958

applying the principles espoused in *Jimenez v. Quarterman*, 555 U.S. 113 (2009), to equitably toll his limitations period.

We must examine the basis of our jurisdiction on our own motion if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). The district court's order instructing the clerk to return Bailey's motion unfiled is not a final appealable order because Bailey did not seek "approval of a judicial officer" as contemplated by Middle District of Louisiana General Order Number 2006-07. Neither has the district court's order been expressly certified by the district court as final under Federal Rule of Civil Procedure 54(b), nor is it an appealable interlocutory order or appealable under the collateral order doctrine. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949); *Briargrove Shopping Ctr. Joint Venture v. Pilgrim Enters., Inc.*, 170 F.3d 536, 538 (5th Cir. 1999); *Thompson v. Drewry*, 138 F.3d 984, 985-86 (5th Cir. 1998). We therefore do not have jurisdiction to consider Bailey's appeal of that order. In so ruling, we do not reach the merits of the argument that Middle District of Louisiana General Order Number 2006-07 is unconstitutional or otherwise improper.

Accordingly, Bailey's appeal is DISMISSED for lack of jurisdiction.