

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

No. 13-11160
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 8, 2014

Lyle W. Cayce
Clerk

GREGORY WAYNE BRISCOE,

Petitioner-Appellant

v.

WILLIAM STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:11-CV-511

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Petitioner-Appellant Gregory Wayne Briscoe, Texas prisoner # 1285555, appeals the denial of his pro se motion seeking to file an out of time appeal of the denial of his 28 U.S.C. § 2254 motion. The district court construed the motion as seeking to reopen the appeal pursuant to Federal Rule of Appellate

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 13-11160

Procedure 4(a)(6), and denied it. Briscoe timely filed an appeal from the denial of his motion to reopen.

We review the denial of a Rule 4(a)(6) motion for abuse of discretion. *In re Jones*, 970 F.2d 36, 39 (5th Cir. 1992). As Briscoe filed his motion well beyond the time limit set forth in Rule 4(a)(6)(B), the district court lacked authority to grant him relief. *See Resendiz v. Dretke*, 452 F.3d 356, 360 (5th Cir. 2006). Briscoe's contention that the district court erred by construing his motion as seeking relief under Rule 4(a)(6) lacks merit. His motion made clear that he sought to reopen the time to appeal based on lack of notice. The substance of his motion is controlling. *See Castro v. United States*, 540 U.S. 375, 381-82 (2003); *Hernandez v. Thaler*, 630 F.3d 420, 426 (5th Cir. 2011).

AFFIRMED.