

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

No. 16-41193

United States Court of Appeals
Fifth Circuit

FILED

October 10, 2017

Lyle W. Cayce
Clerk

RICKY ALLEN BARNETT,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:12-CV-167

Before DENNIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Ricky Allen Barnett, Texas prisoner # 01541732, moves for a certificate of appealability (COA) and leave to proceed in forma pauperis (IFP) on appeal of the district court’s denial of his motion to reopen the appeal period pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure. Rule 4(a)(6) is permissive and compliance with Rule 4(a)(6) does not require the district court to grant the motion, we review the district court’s denial of the motion for an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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abuse of discretion. *See In re Jones*, 970 F.2d 36, 39 (5th Cir. 1992). Barnett did not file his motion to reopen the appeal period within 180 days of the entry of the judgment or within 14 days after he received notice of the judgment and thus did not satisfy the requirements of Rule 4(a)(6)(2). Accordingly, the district court's denial of the motion was not an abuse of discretion. *Rodriguez v. Johnson*, 104 F.3d 694, 696 (5th Cir. 1997).

The motion for a COA is DENIED AS UNNECESSARY. *See Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007); *Dunn v. Cockrell*, 302 F.3d 491, 492 (5th Cir. 2002). Even if a COA were required, Barnett has not shown that one should issue. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

He also has not shown that there is a nonfrivolous issue for appeal concerning the denial of his motion to reopen. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). Barnett's motion for IFP is DENIED. As there is no nonfrivolous issue for appeal, the appeal is DISMISSED AS FRIVOLOUS. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2.