

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 7, 2018

Lyle W. Cayce  
Clerk

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No. 17-40876

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KEITH STUART CUMBEE,

Petitioner-Appellant

v.

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

Respondent-Appellee

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:15-CV-1138

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Before DAVIS, OWEN, and ENGELHARDT, Circuit Judges.

PER CURIAM:\*

Keith Stuart Cumbee, Texas prisoner # 1699482, moves this court for a certificate of appealability (COA) to challenge the denial of a motion he filed pursuant to Federal Rule of Civil Procedure 60 that sought to set aside state court criminal judgments adjudicating him guilty of aggravated assault causing serious bodily injury with a deadly weapon and possession of

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 17-40876

marijuana and to challenge the denial of his motion to stay proceedings pending a decision on his Rule 60 motion. Cumbee filed those motions while his 28 U.S.C. § 2254 application was pending and noticed his appeal from the denial of those motions before final judgment was entered. Judgment has now entered, and Cumbee has noticed his appeal therefrom.

“This Court must examine the basis of its jurisdiction, on its own motion, if necessary.” *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). We have jurisdiction over final decisions and other decisions covered by the collateral order doctrine. *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 103 (2009); 28 U.S.C. §§ 1291, 1292. The decision denying Cumbee’s Rule 60 motion and his motion for a stay qualifies as neither type of decision. Moreover, Cumbee’s premature notice of appeal was not rendered effective upon the entry of final judgment. *See Green Tree Servicing L.L.C. v. House*, \_\_ F.3d \_\_, \_\_, 2018 WL 2204161 \*5 (5th Cir. 2018); *United States v. Cooper*, 135 F.3d 960, 962-63 (5th Cir. 1998). Thus, we lack jurisdiction over this appeal. *See id.*

Accordingly, this appeal is DISMISSED for lack of jurisdiction. Cumbee’s motions for a COA and for permission to proceed in forma pauperis on appeal are DENIED as moot.