

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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|---------------------------------|---|-------------------------------|
| BARTON RAY GAINES, | § | |
| Petitioner, | § | |
| VS. | § | CIVIL ACTION NO.4:08-CV-147-Y |
| | § | |
| NATHANIEL QUARTERMAN, Director, | § | |
| T.D.C.J., Correctional | § | |
| Institutions Division, | § | |
| Respondent. | § | |

ORDER DENYING MOTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)

On March 12, 2009, petitioner Barton Ray Gaines filed a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, purportedly claiming that this Court's dismissal of the petition under 28 U.S.C. § 2254 was in error. The Court's final judgment in this matter was entered on the docket on October 14, 2008. Petitioner did not file a notice of appeal, and the Fifth Circuit has "repeatedly and firmly held that Rule 60(b) cannot be used to extend the time for appeal." *Pryor v. U.S.Postal Serv.*, 769 F.2d 281, 286 (5th Cir. 1985)(citations omitted). Further, the 60(b) motion itself merely reiterates the arguments listed in the written objections to the magistrate judge's report and recommendation, which the Court considered and overruled. Thus, after review and consideration of the motion for relief from judgment under Rule 60(b)(6), the Court concludes that it should be denied.

Therefore, Barton Ray Gaines's March 12, 2009, motion for relief of judgment pursuant to Federal Rule of Civil Procedure 60(b) [docket no. 15] is DENIED.

SIGNED March 23, 2009.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE