

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10462
Summary Calendar

REYNALDO T. RODRIGUEZ,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION ,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CV-1724-Y

July 12, 2001

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:*

Reynaldo T. Rodriguez, Texas inmate #835093, moves for a certificate of appealability from the district court's dismissal without prejudice for lack of exhaustion of his 28 U.S.C. § 2254 petition. The motion for COA is DENIED AS MOOT because Rodriguez did not timely file a notice of appeal. See Fed. R. App. P. 4(a)(1); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982) (requirement of timely notice of appeal is "mandatory and jurisdictional"). We are without jurisdiction

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 01-10462.

-2-

over the appeal. Fed. R. App. P. 3(a)(1). Accordingly, the appeal is DISMISSED.

COA DENIED AS MOOT; APPEAL DISMISSED FOR LACK OF JURISDICTION.