NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 09-5085

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STEVE HENLEY,	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR THE
RICKY BELL, Warden,	)	MIDDLE DISTRICT OF TENNESSEE
	)	
Respondent-Appellee.	)	

Before: SILER, COLE, and COOK, Circuit Judges.

PER CURIAM. Petitioner Steve Henley moves this Court to declare a certificate of appealabilty ("COA") unnecessary to appeal the denial of a motion made under Rule 60 of the Federal Rules of Civil Procedure, or in the alternative, to grant a certificate of appealability. He also moves for a stay of his execution, scheduled for February 4, 2009, pending the disposition of his Rule 60 claim. We hold that a COA is necessary to appeal the denial of his Rule 60 motion, refuse to issue one, and dismiss his motion for stay of execution as moot.

In *United States v. Hardin*, 481 F.3d 924, 926 (6th Cir. 2007), we held that a COA is required to appeal the denial of a Rule 60 motion in a habeas corpus proceeding. That holding governs Henley's current claim; he may not appeal denial of his Rule 60 motion without a certificate of appealability.

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In the alternative, Henley petitions this Court to issue a COA. "To obtain a certificate of appealability, a prisoner must demonstrate that reasonable jurists could disagree with the district court's resolution of his constitutional claims or that the issues presented warrant encouragement to proceed further." *Banks v. Dretke*, 540 U.S. 668, 674 (2004). Having reviewed the parties' briefs and the district court's opinion, we conclude that Henley has not met this standard. Consequently, we decline to issue a COA for the reasons expressed in the district court's well-reasoned opinion of January 29, 2009.

Because we decline to issue a certificate of appealability, we also dismiss as moot Henley's motion to stay his execution pending the disposition of this case.