

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Balentine v. Thaler

692 F.3d 357 (5th Cir. 2012) · Decided August 21, 2012

SUMMARY

The Fifth Circuit denied rehearing en banc and denied as moot Balentine's motion for a stay of execution. The court reaffirmed that, under circuit precedent, the Supreme Court's decision in *Martinez v. Ryan* did not constitute an extraordinary circumstance warranting relief under Federal Rule of Civil Procedure 60(b)(6).

OPINION

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PER CURIAM.

PER CURIAM: The court having been polled and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED.RApp. P. and 5TH Cir. R. 35), the Rehearing En Banc has been DENIED by separate order on this day. John Lezell Balentine's motion for a stay of execution pending consideration of petition for rehearing en banc is DENIED as MOOT. On August 17, 2012, this panel determined that the district court had properly applied one of our precedents to require denial of Balentine's Rule 60(b) motion. See *Ibarra v. Thaler*, 691 F.3d 677, at 685, 2012 WL 3537826, at *6 n. 1 (5th Cir.2012); *Ibarra v. Thaler*, 687 F.3d 222 (5th Cir.2012). Balentine's petition urged reconsideration of the interpretation of the Supreme Court's *Martinez v. Ryan*, — U.S. —, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), decision expressed in *Ibarra*. As a supplement to our earlier analysis of these issues we also note an additional difficulty with Balentine's arguments. This circuit has held that the Supreme Court's "decision in *Martinez*, which creates a narrow exception to *Coleman*'s holding regarding cause to excuse procedural default, does not constitute an 'extraordinary circumstance' under Supreme .Court and our precedent to warrant Rule 60(b)(6) relief." *Adams v. Thaler*, 679 F.3d 312, 320 (5th Cir.2012) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 536, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005)). The petition for rehearing en banc having received insufficient votes from the en banc court, this order also DENIES rehearing by the panel.