

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

No. 18-40897

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

WILLIAM ERIC TAYLOR,

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Texas

Before DENNIS, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(b) and Federal Rule of Appellate Procedure 4(a)(1)(B), the notice of appeal in a civil action in which the United States is a party must be filed within sixty days of entry of the judgment or order from which appeal is taken. A motion brought under 28 U.S.C. § 2255 is a civil action to which the sixty day appeal period applies. *United States v. De Los Reyes*, 842 F.2d 755, 757 (5th Cir. 1988).

In this 28 U.S.C. § 2255 proceeding, the final judgment was entered and certificate of appealability was denied on March 12, 2018. Petitioner filed a

motion to set aside the order of dismissal which the district court denied on May 17, 2018. Accordingly, the final day for filing a timely notice of appeal was July 16, 2018. The defendant's pro se notice of appeal is dated September 15, 2018 and it was filed on September 20, 2018. Because the notice of appeal is dated September 15, 2018, it could not have been deposited in the prison's mail system within the prescribed time. *See* FED. R. APP. P. 4(c)(1) (prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *Robbins v. Maggio*, 750 F.2d 405, 408 (5th Cir. 1985).



A True Copy
Certified order issued Oct 31, 2018

Jylk W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

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PER CURIAM:

This panel previously dismissed the appeal for lack of jurisdiction. The panel has considered Appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.