

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40729



NELSON ROMERO,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

A True Copy
Certified order issued Sep 17, 2019

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

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

Before JONES, CLEMENT, and HAYNES, 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(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

This habeas corpus case filed by a state prisoner was commenced March 26, 2013. The district court entered a final judgment dismissing the petition for failure to prosecute on May 8, 2014. Petitioner filed a motion for reconsideration, which was denied, and a timely notice of appeal. This court

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vacated the judgment and remanded for further proceedings on January 5, 2016. *Nelson Romero v. William Stephens, Director*, Case No. 14-40570 (5th Cir. ~~December 14, 2015~~). ~~WRONG OCT. 24, 2017~~ ^{OCT-24-2017. correct} The district court reopened the case and ordered petitioner to respond to the state's summary judgment motion. After review, final judgment was entered and certificate of appealability was denied on April 26, 2018. Petitioner did not file a notice of appeal.

Petitioner filed a Federal Rule of Civil Procedure 60(b) motion for reconsideration on September 18, 2018 which the district court denied November 13, 2018. Petitioner did not file a notice of appeal. Petitioner filed another Rule 60(b) motion on May 13, 2019. The district court denied the motion on July 2, 2019. This appeal followed.

The final day for filing a timely notice of appeal was August 1, 2019. The petitioner's pro se notice of appeal is dated August 12, 2019 and stamped as filed on August 19, 2019. Because the notice of appeal is dated August 12, 2019, 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). Accordingly, the appeal is DISMISSED for want of jurisdiction.

David J. Bradley, Clerk

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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.

**Additional material
from this filing is
available in the
Clerk's Office.**