

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

Lyfe 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

No. 19-40729

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~~). 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

ENTERED

July 02, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

**NELSON ROMERO,
TDCJ # 01127658,**

Petitioner,

V.

**LORIE DAVIS, Director, Texas
Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

~~~~~

**CIVIL ACTION NO. 3:13-0098**

## MEMORANDUM OPINION AND ORDER

This Court dismissed Romero's petition for a writ of habeas corpus and entered final judgment (Dkt. 49, Dkt. 50) on April 26, 2018, and denied Romero's previous motion for reconsideration (Dkt. 54).


Romero now has filed a motion for review (Dkt. 57) seeking reconsideration of the judgment. Because the motion was filed more than twenty-eight days after judgment was entered, the Court construes the filing as a motion for relief under Rule 60(b). See *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n.2 (5th Cir. 2012). Rule 60(b) is an uncommon means for relief, and “final judgments should not be lightly reopened.” *Lowry Dev., L.L.C. v. Groves & Associates Ins., Inc.*, 690 F.3d 382, 385 (5th Cir. 2012) (internal citation, alteration, and quotation marks omitted). A Rule 60(b) motion may not be used to raise arguments that could have been raised prior to judgment or to argue new legal

theories. *Dial One of the Mid-S., Inc. v. BellSouth Telecommunications, Inc.*, 401 F.3d 603, 607 (5th Cir. 2005).

Romero's motion for review raises the same issues regarding sufficiency of the evidence that he raised prior to entry of judgment and presents no valid ground for relief under Rule 60(b). Therefore, his motion for review (Dkt. 57) is **DENIED**.

The Clerk will send a copy of this order to the parties.

SIGNED at Galveston, Texas, this 2nd day of July, 2019.

  
George C. Hanks Jr.  
United States District Judge

**ENTERED**

April 26, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

NELSON ROMERO,

Petitioner,

VS.

WILLIAM STEPHENS,

Respondent.

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 3:13-CV-98

FILED

**FINAL JUDGMENT**

Pursuant to the Memorandum and Order of even date, the Court **GRANTS** Respondent Lorie Davis' motion for summary judgment, **DENIES** Nelson Romero's petition for a writ of habeas corpus, and **DISMISSES** this case **WITH PREJUDICE**. *no proceedings*  
The Court will not certify any issue for appellate review.

The Clerk will provide a copy of this order to the parties.

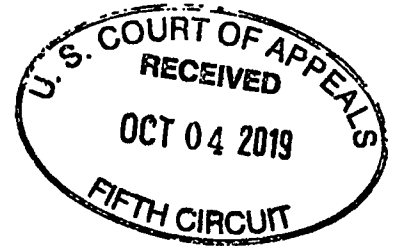
SIGNED at Galveston, Texas, this 26th day of April, 2018.

George C. Hanks Jr.  
George C. Hanks Jr.  
United States District Judge

The 1st. one send with prejudice and no further proceedings so I wrote back to 5th. Cir. they send it was closed in 5th. Cir then I went to Supreme Court they send NO toll I tried to Amend it to my civil law suit. They send NO toll. Then I did motion for Reconsideration. They send rule 60 b. and because it was filed more than 28. days y wawaw When George Hanks send NO further proceedings I sent that copy back to them they never sent it back and sent back summary & judgment on too not one sheet on both sides of paper shrunk ~~again~~ ~~again~~.

Case 3:13-cv-00098 Document 60 Filed on 08/21/19 in TXSD Page 1 of 1

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION



Rec-8-30-19

Nelson Romero

versus

Case Number: 3:13-cv-00098  
Judge Judge George C Hanks, Jr.

William Stephens

**NOTICE OF THE FILING OF AN APPEAL**

An appeal has been filed by Nelson Romero. The following appeal and related motions are pending in the District Court:

Notice of Appeal – #59

If the appellant fails to comply with the following requirements, then the Clerk of Court will submit a certificate of noncompliance to the Fifth Circuit Court of Appeals.

**FILING FEE:**

A filing fee is required to proceed on appeal. If the filing fee has not already been paid, then it must be paid or a motion to proceed *in forma pauperis* must be filed, unless appellant is an United States government agency.

**TRANSCRIPTS:**

If hearings were held in this case and the transcripts were not already produced, then transcripts must be ordered. Pursuant to FRAP 10(b)(1), a transcript order form must be filed within 14 days of the filing of the notice of appeal. Under Fifth Circuit Rule 10, the appellant's order of the transcript must be made on a DKT-13 Transcript Order form. The DKT-13 must be filed regardless of whether there were hearings or transcripts needed. A link to the DKT-13 form and instructions for ordering transcripts are available on the court's website at [www.txs.uscourts.gov/page/OrderingTranscripts](http://www.txs.uscourts.gov/page/OrderingTranscripts).

If there were no hearings or no transcripts are needed, file the DKT-13 form with the appropriate box marked to indicate so. For cases where transcripts are needed, prepare a separate DKT-13 for each reporter from whom you are ordering transcripts. All transcripts for electronically recorded proceedings may be ordered on one form. Each form should indicate the exact dates of the proceedings to be transcribed by that reporter.

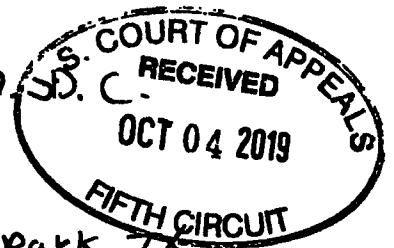
**EXHIBITS:**

The Fifth Circuit requires exhibits admitted into evidence be included in the electronic record for transmission to the Fifth Circuit. Exhibits in the custody of the court will be electronically filed by court staff. Exhibits previously returned to the parties must be immediately electronically filed in this case by the attorney, using event Exhibits in the Trial Documents category in ECF.

Date: August 21, 2019.

David J. Bradley, Clerk

SUPreme COURT. N.E. Washington.



NEILSON ROMERO. 1127658.

Allred unit. 2101 FM. 369. N. Iowa Park. TX

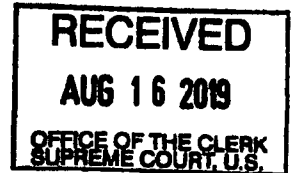
76367.

- V -

WILLIAM STEPHENS T.D.C.J DIRECTOR

U.S.D.C NO. 3:13-LV-98.

. NO. 14-40570.



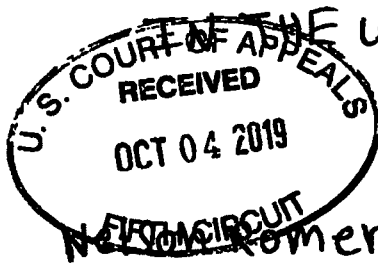
8-9-19

The above case was REMANDED December 14th. 2015.

in united States Fifth. Circuit. After one year and Ten months I wrote fifth circuit asking whats going on ~~with the circuit~~ <sup>DIST. CT.</sup> ORDERD ME to send Motion for summary Judgment. I Sent motion for extinction. Then a motion for summary Judgment.

APRil 26. 2018. Southern District of Texas p.o. Box. 61010. Houston TX. DENNIES Motion with prejud-ice and NO further procdengs; I IMMEDIATELY write Back to fifth circuit They say Case is Closed in that office I IMMEDIATELY write to us. Supreme court This office Explains that this issue must be handeld in lower courts I go back to district Court with motion for RECONsider-ation. AGAIN DENNIED as finnal Judgment I go Back to fifth circuit They Explain I must send motion Captioned for Review. I did exzactly that it allso is DENNIED. on 8-<sup>5</sup>-19. I recieved The Dennial. I write requesting a motion for Appointment of Councel and a writ of Citorieor. To Appeal this Case in the united States Supreme court. I dully swear under penalty of perjury Every thing is true to best of my abillity. Sind Nelson Romero. NELSON ROMERO Executed And Placed in U.S. Post Box. on. 8-9-12. at Allred unit 2101. FM. 369. N. Iowa. TX. 76367.





UNITED STATES COURT OF APPEALS  
SUPREME COURT  
my ~~COPY~~  
pro se.

~~Nelson Romero~~ 1127658.  
Petitioner

-v-  
William Stephens.

Case No. 3:13-CV-98

from Appeal NO. 14-09-01035-CR

Trial Cause NO. 58,710

Southern Dist of TX. Po-Box. 61010. Houston  
TX. 77208-.

Transferred from Brazoria County. on April. 2.  
2013

---

First Motion for Extension of Time to file  
in Supreme Court of Appeals. Petitioner files  
this motion for an extension of (60) day's.

Petitioners request is based upon facts Petitioner  
is not schooled in the law and needs all the help  
he can get from the courts. WHEREFORE Petitioner  
prays this Court grant this motion for (60) day's.

Nelson. Romero 1127658. incarcerated in the Allred unit  
2101 FM. 369. North Iowa Park. TX. 76367..

Placed in mail box us Postal. on 11-26-18. Dully swear  
under Penalty of Perjury every thing herin is true to  
best of my knowledge. Nelson Romero. November.

26 2018

SEP 18 2018

J. L. Stephens, Clerk of Court

NELSON, Romero. 1127658.

- V -  
William Stephens,

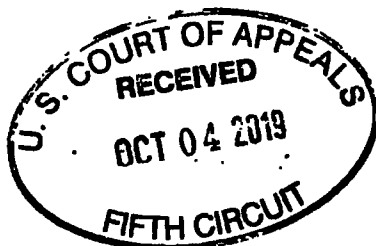
USDC NO. 3:13-CV-98

Sept

9-10-18MOTION for RECONSIDERATION. Deny'd. 11-13-18

Dear District Clerk of above Sead Court now Comes Nelson Romero. With a IMMEDIAT. responce Romero ask's this Court to aknolige that at no time did I abandon this Case. on 4-26-18. the Honorable Judge George C. Hanks Jr. Denies my Petition. And DISMISSES this Case with Prejudice

The Same Week I IMMEDIATELY wrote back to. 5th Circuit. 600. S. Maestri Place. New Orleans LA. 70130 they can bearify this. They sead Case was closed at this office. I then wrote to Supreme Court. Washin gton. DC. 20543-0001. When I got their reply I wrote back to. New-orleans LA. 70130. they recei ved my Correspondence with attachments. ON August 13, 2018. They informed me that any att-empt to challenge this Courts ruling April 26. 2018, would requier the filing of a notice of Appeal Which should be both be Captioned and filed directly to this Court, Their for I ask the Court to pleas take under Consideration I'm not Schooled in the law and seek help for from uther inmates. However this Court misunderstand's the motion that was dismissed by Dist Judge. George. C. Hanks Jr. I Submit new proof on my behalf.

over . back side  
→

- 2 -

TOW indictments NO. 54370. I WAS INDICTED for AGG ASSAULT W. - DEADLY WEAPON. THIS CASE WAS DISMISST. THEN STATE ATTORNEY REE INDICTS ME for POSSESSION of a DEADLY WEAPON. CASE # 58710.. ON THE FIRST INDICTMENT NO. 54370, THE ACTUAL INDICTMENT IT CLEARLY STATE an object unknown to the grand jury. Yet the District Courts Attorney submits weapons that do not belong to me. AND THIS DISCOVERY with expert's testimony is clear that Rick. Zachary was not attacked with a DEADLY weapon. This is where the Brooks-V- State supra. AND Jackson -V- Virgin 99. S.Ct 2781. (1979) comes into place.

THIS COURT ALSO ASKED FOR HIS RESPONSE TO STATE MOTION FOR SUMMARY JUDGMENT IT IS HEAR ALONG WITH STATE MOTION FOR SUMMARY JUDGMENT.

- VERIFICATION -

I Nelson. Romero. TDCJ #. 1127658 PRO SE. IN ABOVE MOTION FOR RECONSIDERATION PETITIONER HERE BY DECLARES UNDER PENALTY OF PERJURY THAT THE FACTUAL ALLEGATIONS CONTAINED IN THIS PLEADING ARE TRUE AND CORRECT. WHEREFORE BASED ON THE ABOVE I RESPECTFULLY ASK THE COURT TO GRANT THIS MOTION FOR RECONSIDERATION IN ALL THINGS ALTERNATIVELY APPOINT COUNSEL OR ACQUIT, OR AN EVIDENTIARY HEARING TO RESOLVE THIS FACTUAL DISPUTE. RESPECTFULLY SUBMITTED ON THIS

10th day of September. 2018 Nelson Romero  
Nelson. Romero.

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

April 24, 2019

#1127658  
Mr. Nelson Romero  
CID Allred Prison  
2101 FM 369, N.  
Iowa Park, TX 76367-0000

No. 14-40570 Nelson Romero v. William Stephens, Director  
USDC No. 3:13-CV-98

Dear Mr. Romero,

We received your document entitled "Motion for Extension to file Appeal." The request should be captioned and directed to the United States District Court, we are taking no action on this motion.

Sincerely,

LYLE W. CAYCE, Clerk



By: Monica R. Washington, Deputy Clerk  
504-310-7705

cc: Ms. Elizabeth Alisse Goettert