

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20-60093



DEMETRIUS BARBER,

Plaintiff - Appellant

v. _____

DOCTOR JAMES BURKE; P. RILEY; R. PENNINGTON,

Defendants - Appellees

A True Copy

Certified order issued Jul 10, 2020

Steph W. Cayer

Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from the United States District Court
for the Northern District of Mississippi

Before ELROD, COSTA, and ENGELHARDT, 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.

In this civil rights case, the district court entered a final judgment dismissing the complaint on January 10, 2019. Plaintiff then filed a motion for reconsideration on April 23, 2019 and a motion for summary judgment on April 30, 2019. The district court construed those filings as a motion for relief from judgment under Federal Rule of Civil Procedure 60 and denied relief on May

No. 20-60093

6, 2019. Therefore, the final day for filing a timely notice of appeal was June 5, 2019. The plaintiff's pro se notice of appeal is both dated and filed as of February 4, 2020. Because the notice of appeal is dated February 4, 2020, 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. *United States v Garcia-Machado*, 845 F. 2d 492, 493 (5th Cir. 1988). Accordingly, the appeal is DISMISSED for want of jurisdiction. All pending motions are DENIED.

See:



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DEMETRIUS BARBER

PLAINTIFF

v.

No. 4:18CV149-JMV

**DR. JAMES BURKE
P. RILEY
R. PENNINGTON**

DEFENDANTS

FINAL JUDGMENT

In accordance with the memorandum opinion entered this day, the instant case is
DISMISSED with prejudice for failure to state a claim upon which relief could be granted, counting
as a **"STRIKE"** under 28 U.S.C. § 1915(g).

SO ORDERED, this, the 10th day of January, 2019.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DEMETRIUS BARBER

PLAINTIFF

v.

No. 4:18CV149-JMV

DR. JAMES BURKE

P. RILEY

R. PENNINGTON

DEFENDANTS

ACKNOWLEDGMENT OF RECEIPT

I, Demetrius Barber, hereby acknowledge that I have this day received a copy of the court's
**ORDER DENYING PLAINTIFF'S MOTIONS [16], [17] FOR RELIEF FROM JUDGMENT
OR ORDER** dated May 6, 2019.

This, the 5 day of ~~17~~ 30, 2019.



DEMETRIUS BARBER
PLAINTIFF

Please return this Acknowledgment Form to:

Clerk, U.S. District Court
Pro Se Law Clerk
203 Gilmore Dr.
Amory, MS 38821

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DEMETRIUS BARBER

PLAINTIFF

v.

No. 4:18CV149-JMV

DR. JAMES BURKE

P. RILEY

R. PENNINGTON

DEFENDANTS

ORDER DISMISSING MOTION [20] FOR A
CERTIFICATE OF APPEALABILITY AS UNNECESSARY

This matter comes before the court on the motion [20] for a Certificate of Appealability in this case filed under 42 U.S.C. § 1983. As a Certificate of Appealability is only appropriate in *habeas corpus* cases the instant motion [20] is **DISMISSED** as unnecessary.

SO ORDERED, this, the 6th day of January, 2020.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE

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

September 03, 2020

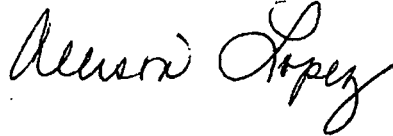
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-60093 Demetrius Barber v. James Burke, et al
USDC No. 4:18-CV-149

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "Allison G. Lopez", written over a horizontal line.

By: _____
Allison G. Lopez, Deputy Clerk
504-310-7702

Mr. Demetrius Barber
Mr. John Chadwick Williams

**United States Court of Appeals
for the Fifth Circuit**

No. 20-60093

DEMETRIUS BARBER,

Plaintiff—Appellant,

versus

DOCTOR JAMES BURKE; P. RILEY; R. PENNINGTON,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:18-CV-149

Before ELROD, COSTA, and ENGELHARDT, *Circuit Judges.*

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.

[Proof] 2

MDOC document upload**U.S. District Court****Northern District of Mississippi****Notice of Electronic Filing**

The following transaction was entered by Gibson_MDOC, Margaret on 1/14/2020 at 11:08 AM CST and filed on 1/14/2020

Case Name: MDOC

Case Number: 3:20-mc-07777

Filer:

Document Number: 6

Docket Text:

PRISONER DOCUMENTS SUBMITTED for MS State Penitentiary (Parchman) Prison:

for Prisoner ID: k6330 in existing case: 4:18 CV 149 submitted on behalf of Demetrius Barber

The case number above is NOT your case number.

After your case has been processed by the Clerk's Office, you will receive communication that your Complaint or Petition has been filed, and a letter will be sent to advise you of your case number.

This number will be used whenever you have any communications with the court.

(Gibson_MDOC, Margaret)

3:20-mc-07777 Notice has been electronically mailed to:

3:20-mc-07777 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

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Electronic document Stamp:

**[STAMP dcecfStamp_ID=1078244644 [Date=1/14/2020] [FileNumber=2125705-0]
] [15d3a57e4f76cde0c73dac3c0a103783152f37f95e2b5922588b5c4201edc8283ce
91f82211862f8670e9a111852e8f43b0e36246bef974494aeaf72ab93230e]]**

Proof 3

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
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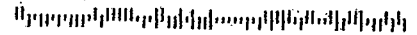
January 21, 2020

Mr. Demetrius Barber #K6330
P O Box 10
Parchman, MS 38738

38738-999955

SPECIAL MAIL

Open only in the
presence of inmate



Date Received 1-28-20
Accepted ☒ Refused ☐
Inmate Signature *Demetrius Barber*
Date/Time 1-28-20
Inspected by C. Russell

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

January 21, 2020

Mr. Demetrius Barber #K6330
P O Box 10
Parchman, MS 38738

Dear Mr. Barber:

I am responding to your petition, complaint or other papers for the following reason(s):

This is a court of limited jurisdiction. This means we can only act on cases which have been filed and decided in a U. S. District Court, or an agency within this circuit.

Sincerely,

LYLE W. CAYCE, Clerk



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