

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 19, 2022

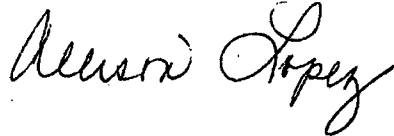
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-30565 Ricks v. Hooper
 USDC No. 3:21-CV-831

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 in a cursive style.

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

Mr. Wesley S. Ricks

United States Court of Appeals
for the Fifth Circuit

No. 21-30565

United States Court of Appeals
Fifth Circuit

FILED

January 19, 2022

Lyle W. Cayce
Clerk

WESLEY S. RICKS,

Petitioner—Appellant,

versus

TIM HOOPER, *Warden, Louisiana State Penitentiary,*

Respondent—Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
No. 3:21-CV-831

Before SMITH, HIGGINSON, and WILLETT, *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). Per 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 habeas corpus case filed by a state prisoner, the final judgment was entered, and certificate of appealability denied, on July 21, 2021. Therefore, the final day for filing a timely notice of appeal was August 20, 2021.

No. 21-30565

The petitioner's *pro se* notice of appeal is dated September 10, 2021, and stamped as filed on September 13, 2021. Accordingly, the notice could not have deposited into the prison's mail system within the prescribed time. See FED. R. APP. P. 4(c)(1) (stating that a prisoner's *pro se* notice of appeal is timely filed if deposited in the institution's internal mail system by 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.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

WESLEY S. RICKS

CIVIL ACTION NO. 21-0831

VS.

SECTION P

JUDGE TERRY A. DOUGHTY

DARREL VANNOY

MAG. JUDGE KAYLA D. MCCLUSKY

JUDGMENT

The Report and Recommendation of the Magistrate Judge having been considered, together with the document filed by Petitioner and titled “Motion for Leave to Appeal” [Doc. No. 43] which the Court construes as an objection to the Report and Recommendation and a request for a Certificate of Appealability, and, after a *de novo* review of the record, finding that the Magistrate Judge’s Report and Recommendation is correct and that judgment as recommended therein is warranted,

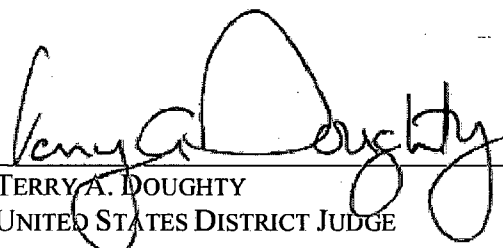
IT IS ORDERED, ADJUDGED, AND DECREED that Petitioner Wesley S. Ricks’ Petition for Writ of Habeas Corpus, [doc. #s 1, 6, 8], is **DENIED and DISMISSED WITH PREJUDICE** as time-barred under 28 U.S.C. § 2244(d).

IT IS FURTHER ORDERED that Petitioner’s remaining motions, [doc. #s 12, 14, 15, 18, 19, 22, 23, 24, 25, 26, 27, 33, 34, 35, 38], are **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Petitioner’s document titled “Motion for Leave to Appeal” [Doc. No. 43] which the Court construes as an objection to the Report and Recommendation and a request for a Certificate of Appealability, is **DENIED**.¹

¹ The Court is filing a separate Order further addressing the Certificate of Appealability.

MONROE, LOUISIANA, this 20th day of July, 2021.



TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

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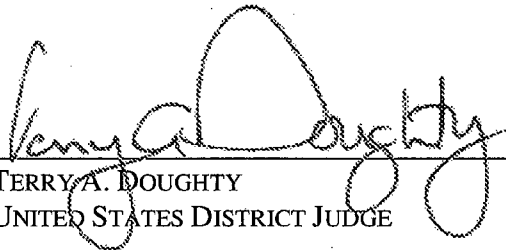
IT IS ORDERED, ADJUDGED, AND DECREED that Petitioner Wesley S. Ricks’ Petition for Writ of Habeas Corpus, [doc. #s 1, 6, 8], is **DENIED and DISMISSED WITH PREJUDICE** as time-barred under 28 U.S.C. § 2244(d).

IT IS FURTHER ORDERED that Petitioner’s remaining motions, [doc. #s 12, 14, 15, 18, 19, 22, 23, 24, 25, 26, 27, 33, 34, 35, 38], are **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Petitioner’s document titled “Motion for Leave to Appeal” [Doc. No. 43] which the Court construes as an objection to the Report and Recommendation and a request for a Certificate of Appealability, is **DENIED**.¹

¹ The Court is filing a separate Order further addressing the Certificate of Appealability.

MONROE, LOUISIANA, this 20th day of July, 2021.



TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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February 03, 2022

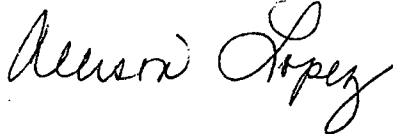
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Respondent—Appellee.

Appeal from the United States District Court
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USDC No. 3:21-CV-831

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:

This panel dismissed the appeal for want of jurisdiction and denied all pending motions. Appellant's motion for reconsideration is DENIED.