

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 10, 2022

Ms. Jeannette Clack
Western District of Texas, San Antonio
United States District Court
655 E. Cesar E. Chavez Boulevard
Suite G65
San Antonio, TX 78206

No. 21-50044 Debnam v. Salazar
USDC No. 5:19-CV-1100

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By: _____
Charles B. Whitney, Deputy Clerk
504-310-7679

cc: Mr. Kevin Debnam

Appendix A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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NEW ORLEANS, LA 70130

December 17, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-50044 Debnam v. Salazar
USDC No. 5:19-CV-1100

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

United States Court of Appeals
for the Fifth Circuit

No. 21-50044
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 17, 2021
Lyle W. Cayce
Clerk

KEVIN DEBNAM,

Plaintiff—Appellant,

versus

JAVIER SALAZAR, SHERIFF, BEXAR COUNTY; SAN ANTONIO
POLICE OFFICER D. ELLIOTT, (BADGE #969),

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:19-CV-1100

Before STEWART, HAYNES, and HO, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED for lack of jurisdiction.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 17, 2021

Lyle W. Cayce
Clerk

No. 21-50044
Summary Calendar

KEVIN DEBNAM,

Plaintiff—Appellant,

versus

JAVIER SALAZAR, *SHERIFF, BEXAR COUNTY*; SAN ANTONIO
POLICE OFFICER D. ELLIOTT, (BADGE #969),

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:19-CV-1100

Before STEWART, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:*

Kevin Debnam, Texas prisoner # 1074319, moves for leave to proceed in forma pauperis (IFP) on appeal from the district court's dismissal of his 42 U.S.C. § 1983 lawsuit. This court must examine the basis of its own

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

jurisdiction, sua sponte, if necessary. *Trent v. Wade*, 776 F.3d 368, 387 (5th Cir. 2015). “[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007). A notice of appeal in a civil case must be filed within 30 days of the entry of the judgment or order being appealed. FED. R. APP. P. 4(a)(1)(A).

Here, final judgment was entered on May 26, 2020. Debnam did not file his notice of appeal until January 22, 2021, several months too late. Although he asserted that his lawsuit had been “dismissed without his knowing,” his untimely notice of appeal cannot be treated as a request for an extension of time based on excusable neglect or good cause under Rule 4(a)(5) as such motions must be filed within 30 days of the entry of judgment. *See* FED. R. APP. P. 4(a)(5). Debnam similarly has not demonstrated that he could meet the requirements for reopening the time for filing an appeal under Rule 4(a)(6) such that his untimely notice of appeal should be construed as such a request. *See* FED. R. APP. P. 4(a)(6).

Accordingly, Debnam’s appeal is DISMISSED for lack of jurisdiction. His motion for leave to proceed IFP on appeal is DENIED.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

KEVIN DEBNAM, SID #1074319,

Plaintiff,

v.

**BEXAR COUNTY SHERIFF
JAVIER SALAZAR, ET AL.,**

Defendants.

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SA-19-CV-01100-XR

ORDER OF DISMISSAL

Before the Court is Plaintiff Kevin Debnam's ("Debnam") *pro se* Amended Complaint filed pursuant to 42 U.S.C. § 1983. (ECF No. 9). In his Amended Complaint, Debnam asserted claims against Bexar County Sheriff Javier Salazar ("the Sheriff") and San Antonio Police Department Officer D. Elliott, Badge #969 ("Elliott"). (*Id.*). The Court ordered Debnam's claims against the Sheriff dismissed with prejudice for failure to assert a non-frivolous claim. (ECF No. 11); *see* 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii), 1915A(b)(1). In that same Order, the Court ordered the remainder of the matter stayed pending resolution of Debnam's underlying criminal proceedings. (ECF No. 11); *see Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). The Court further ordered Debnam to file advisories with the Court every sixty (60) days concerning the status of the underlying criminal proceedings. (ECF No. 11). Debnam was warned that if he failed to file the advisories as mandated, the matter would be dismissed pursuant to Rule 41(b). (*Id.*); *see* FED. R. CIV. P. 41(b). The mandated advisory was last due in this Court on April 21, 2020, but was not filed. (ECF No. 11).

Additionally, when Debnam filed his original Complaint, he was confined in the Bexar County Adult Detention Center ("BCADC") awaiting resolution of several felony charges, including: (1) aggravated assault with a deadly weapon; (2) theft of a firearm; and (3) felon in possession of a firearm. <https://search.bexar.org/Case/CaseSummary?r=aealda114-287a-4c02->

[a982-a37ae9343360&st=s&s=1074319 &cs=&ct=&=](#) (last visited May 26, 2020). Bexar County records show Debnam paid the bond set by the trial court and he was released from custody on or about April 15, 2020. *Id.* The form Debnam used to file his Complaint and Amended Complaint advised him it was his responsibility to inform the court of any change of address. (ECF Nos. 1, 9). The form further advised that “[f]ailure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of [the] complaint pursuant to FED. R. CIV. P. 41(b).” Debnam has not provided the Court with an updated address.

IT IS THEREFORE ORDERED that Debnam’s section 1983 claims against Elliott (ECF No. 9) are **DISMISSED WITHOUT PREJUDICE** pursuant to FED. R. CIV. P. 41(b) for failure to prosecute, failure to provide an updated address, and failure to comply with the Court’s Order requiring him to file advisories regarding the status of his underlying criminal proceedings (ECF No. 11).

SIGNED this 26th day of May, 2020.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

KEVIN DEBNAM, SID #1074319,

Plaintiff,

v.

**BEXAR COUNTY SHERIFF
JAVIER SALAZAR, ET AL.,**

Defendants.

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SA-19-CV-01100-XR

FINAL JUDGMENT


Before the Court is the above-entitled cause. Upon review of this Court's Order dismissing Plaintiff Kevin Debnam's section 1983 claims against Defendant Bexar County Sheriff Javier Salazar pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii), 1915A(b)(1) for failure to state a non-frivolous claim and this Court's Order dismissing Plaintiff Kevin Debnam's section 1983 claims against Defendant San Antonio Police Department Officer D. Elliott, Badge #969, pursuant to FED. R. CIV. P. 41(b) for failure to prosecute and comply with the Court's Order and failure to keep the Court apprised of his current address, the Court renders the following Final Judgment Pursuant to FED. R. CIV. P. 58.

IT IS THEREFORE ORDERED that Plaintiff Kevin Debnam's section 1983 claims against Defendant Bexar County Sheriff Javier Salazar are **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii), 1915A(b)(1) for failure to state a non-frivolous claim.

IT IS FURTHER ORDERED that Plaintiff Kevin Debnam's section 1983 claims against Defendant San Antonio Police Department Officer D. Elliott, Badge #969, are **DISMISSED**

WITHOUT PREJUDICE pursuant to FED. R. CIV. P. 41(b) for failure to prosecute, failure to provide an updated address, and failure to comply with the Court's Order requiring him to file advisories regarding the status of his underlying criminal proceedings.

SIGNED this 26th day of May, 2020.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE