

No. 21-3182

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Sep 28, 2021  
DEBORAH S. HUNT, Clerk

RODNEY CURTIS,

Petitioner-Appellant,

v.

JAY FORSHEY,

Respondent-Appellee.

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ORDER

Before: GRIFFIN, Circuit Judge.

Rodney Curtis, an Ohio prisoner proceeding pro se, appeals the district court's judgment denying his petition for a writ of habeas corpus, filed under 28 U.S.C. § 2254. Curtis's notice of appeal is construed as an application for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b)(1). Curtis has filed a motion to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5).

In October 2015, Curtis pleaded guilty, pursuant to a written plea agreement, to ten counts of illegal use of a minor in nudity-oriented material, in violation of Ohio Revised Code § 2907.323(A)(1), and three counts of sexual battery, in violation of Ohio Revised Code § 2907.03(A)(5). In exchange for Curtis's guilty pleas, the State dismissed sixty-one other charges against him. The trial court accepted Curtis's guilty pleas and sentenced him to an aggregate term of eleven years' imprisonment. The trial court journalized Curtis's sentencing entry on December 4, 2015. Curtis did not file a timely direct appeal but instead moved for leave to file a delayed appeal on November 26, 2016. *See* Ohio R. App. P. 5(A). The Ohio Court of Appeals denied Curtis's motion for leave to file a delayed appeal on January 3, 2017, and dismissed the appeal. Curtis did not seek review from the Ohio Supreme Court.

Meanwhile, on November 23, 2016, Curtis filed a state petition for post-conviction relief, in which he argued that his trial counsel had failed to properly investigate his case and coerced

however, if a petitioner “shows ‘(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)); see *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 749-50 (6th Cir. 2011).

Reasonable jurists could not debate the district court’s determination that Curtis is not entitled to equitable tolling. Even if the trial court and trial counsel had failed to inform Curtis of his appellate rights, this in no way prevented Curtis from filing a timely federal habeas petition. Regardless of whether Curtis filed a direct appeal in state court, he had one year from the date on which his conviction became final to file a federal habeas petition. Curtis cited no extraordinary circumstance that stood in his way and prevented him from filing a timely federal habeas petition. Even assuming that Curtis was unaware of the one-year limitations period, “ignorance of the law alone is not sufficient to warrant equitable tolling.” *Allen v. Yukins*, 366 F.3d 396, 403 (6th Cir. 2004) (quoting *Rose v. Dole*, 945 F.2d 1331, 1335 (6th Cir. 1991)).

Finally, a demonstration of actual innocence may also serve as a gateway to review an otherwise barred claim, but Curtis must present new evidence showing that “it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.” See *McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). Curtis did not make a colorable showing that he is actually innocent of his crimes of conviction.

Accordingly, Curtis’s COA application is **DENIED**, and his motion for pauper status is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

  
Deborah S. Hunt, Clerk

**NOT RECOMMENDED FOR PUBLICATION**

No. 21-3182

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

RODNEY CURTIS,	)
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Petitioner-Appellant,	)
	)
v.	)
	)
JAY FORSHEY,	)
	)
Respondent-Appellee.	)
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	)
	)

<b>FILED</b> May 14, 2021 DEBORAH S. HUNT, Clerk
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

Before: COLE, GILMAN, and McKEAGUE, Circuit Judges.

“Every federal appellate court has a special obligation to satisfy itself . . . of its own jurisdiction . . .” *Alston v. Advanced Brands & Importing Co.*, 494 F.3d 562, 564 (6th Cir. 2007) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95 (1998)). Generally, in a civil case where the United States, a United States agency, or a United States officer or employee is not a party, a notice of appeal must be filed within thirty days after the judgment or order appealed from is entered. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A).

Rodney Curtis seeks to appeal the district court’s judgment dismissing his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. The district court’s judgment was entered on September 24, 2020. Curtis filed his notice of appeal in the district court on February 22, 2021. Prior to filing the notice of appeal, Curtis filed a motion pursuant to Federal Rule of Civil

No. 21-3182

- 2 -

Procedure 59(e). In order for the Rule 59(e) motion to toll the appeal period, the motion was due to be filed on or before October 22, 2020. Fed. R. App. P. 4(a)(4)(A)(v). The district court received Curtis's motion on November 5, 2020. In response to our request that Curtis indicate the date he properly delivered the Rule 59(e) motion to prison officials for mailing to the court, *see Houston v. Lack*, 487 U.S. 266 (1988), Curtis submitted a 28 U.S.C. § 1746 declaration and a notarized statement indicating that he deposited the motion in the prison's internal mail system on October 8, 2020. Because the motion was filed within twenty-eight days of the district court's September 24, 2020 judgment, it tolled the appeal period. *See* Fed. R. Civ. P. 59(e); Fed. R. App. P. 4(a)(4). The district court denied the Rule 59(e) motion on November 18, 2020, making the notice of appeal due on or before December 18, 2020. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). Because the notice of appeal was not filed in the district court until February 22, 2021, this court entered another order directing Curtis to show cause as to why his appeal should not be dismissed on the basis of a late notice of appeal. Curtis offered a notarized statement indicating that he placed his notice of appeal in the institutional mail on December 3, 2020. We note that a copy of the notice of appeal, dated December 3, 2020, was attached to the February 22 notice of appeal.

Curtis cannot benefit from the prison mailbox rule set forth in Federal Rule of Appellate Procedure 4(c). Curtis's notarized statement complies only partially with Rule 4(c) by indicating the date of deposit, but not prepayment of first-class postage. "Rule 4(c)(1) requires the [notarized statement] to state only two things; 50% is not enough. The postage requirement is important: mail bearing a stamp gets going, but an unstamped document may linger. Perhaps that is exactly what happened [in this case]." *United States v. Craig*, 368 F.3d 738, 740 (7th Cir. 2004); *see also Leavy v. Hutchinson*, 952 F.3d 830, 832 (6<sup>th</sup> Cir. 2020).

As an additional excuse for his late notice of appeal, Curtis asserts that "the prison was dealing with a myriad of COVID-19 restrictions and was greatly understaffed." Our show-cause order pointed Curtis to the available remedies for seeking an extension of time to file a notice of appeal, but he failed to avail himself those remedies.

No. 21-3182

- 3 -

Curtis's failure to timely file a notice of appeal deprives this court of jurisdiction. Compliance with § 2107(a)'s statutory requirement that the notice of appeal be filed within thirty days after the entry of a judgment is a mandatory jurisdictional prerequisite that this court may neither waive nor extend. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 20 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

Accordingly, we **DISMISS** Curtis's appeal for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**RODNEY CURTIS,**

**Petitioner,**

**v.**

**WARDEN, NOBLE  
CORRECTIONAL INSTITUTION,**

**Respondent.**

**CASE NO. 2:20-CV-367**

**JUDGE EDMUND A. SARGUS, JR.**

**Magistrate Judge Chelsey M. Vascura**

**OPINION AND ORDER**

On September 24, 2020, Judgment was entered dismissing this action as barred by the one-year statute of limitations under 28 U.S.C. § 2244(d). (ECF No. 20.) On November 18, 2020, the Court denied Petitioner's motion for reconsideration. (ECF No. 22.) On February 22, 2021, Petitioner filed a Notice of Appeal. In a letter dated February 18, 2021, Petitioner indicates that he submitted the Notice of Appeal with prison officials for mailing on December 3, 2020. (ECF No. 24, PAGEID # 515-16.) Petitioner has filed a motion for a certificate of appealability and request to proceed *in forma pauperis* on appeal. (ECF No. 23.)

An appeal must be filed within thirty days after entry of judgment of the order being appealed. Fed. R. App. P. 4(a)(1)(A). Under the prison mailbox rule, a filing will be considered timely "if it is deposited in the institution's internal mail system on or before the last day for filing." *Gamble v. Robinson*, No. 20-3278, 2020 WL 5353294, at \*1 (6th Cir. June 15, 2020) (citing Fed. R. App. P. 4(c)(1)). "A prisoner can establish timely filing of a notice of appeal under the prison mailbox rule by providing a notarized statement or a declaration under penalty of perjury stating the date on which the document was given to prison authorities and attesting that the postage was prepaid, or by providing other evidence, such as a postmark or date-stamp,

showing that the notice was deposited timely and the postage prepaid.” *Id.* (citing Fed. R. App. P. 4(c); *United States v. Smotherman*, 838 F.3d 736, 738 (6th Cir. 2016)). Petitioner has failed to do so here. Moreover, the timing requirements for the filing of an appeal “are mandatory jurisdictional prerequisites that generally may not be waived.” *Young v. Kenney*, 949 F.3d 995, 996 (6th Cir. 2020) (citing *Bowles v. Russell*, 551 U.S. 205, 214 (2007)). A party seeking to extend the deadline or reopen the time to file an appeal on the basis of excusable cause or neglect must file a motion requesting such relief in the district court no later than 30 days after the expiration of the thirty-day time period for filing the appeal. *See Pennebaker v. Rewerts*, No. 17-12196, 2021 WL 267782, at \*4 (E.D. Mich. Jan. 27, 2021) (citing Fed. R. App. P. 4(a)(5)(A); *Tanner v. Yukins*, 776 F.3d 434, 438 (6th Cir. 2015)): Thus, even liberally construing Petitioner’s letter as a request for an extension of time, *Young v. Kenney*, 949 F.3d at 997 (“district courts must liberally construe a document that could reasonably be interpreted as a motion for an extension of time to file a notice of appeal or a motion to reopen the time to file an appeal”), it is untimely.

Therefore, Petitioner’s motion for a certificate of appealability is **DENIED**.

The Court **CERTIFIES** the appeal is not in good faith and therefore **DENIES** the request to proceed *in forma pauperis* on appeal.

**IT IS SO ORDERED.**

s/Edmund A. Sargus, Jr. 3/5/2021  
EDMUND A. SARGUS, JR.  
UNITED STATES DISTRICT JUDGE