

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CHASTITY QUINTANA,

Plaintiff - Appellant,

v.

RODNEY WIRTHLIN; RAYMOND S.
SHUEY; DOMAIN SUMMARY; DAN
AVIS; ANGELA F. MICKLOS; DENISE
M. PORTER; J. BROWN; CHYLEEN A.
ARBON; CARRIE L. COCHRAN;
CLARK A. HARMS; GREG E.
JOHNSON,

Defendants - Appellees.

CHASTITY QUINTANA,

Plaintiff - Appellant,

v.

LOGAN CLARK, PA, Utah State Prison
Clinical Services Bureau; TODD GAY,
PA, Utah State Prison Clinical Services
Bureau; MIKE HADDON, Executive
Director, Utah State Prison; JIM
HUDSPETH, Deputy Director, Utah State
Prison; TONY WASHINGTON, Clinical
Service Bureau, Director; BLITCH
SHUMAN, Deputy Director, Utah State
Prison; MENTAL HEALTH PROGRAM
ADMINISTRATOR, Mental Health
Bureau of Clinical Services;
TIMPANOGOS MTT
ADMINISTRATION, Mental Health

No. 23-4062
(D.C. No. 2:20-CV-00156-TS)
(D. Utah)

No. 23-4063
(D.C. No. 2:20-CV-00157-RJS)
(D. Utah)

Bureau of Clinical Services; JULIE LNU, Therapy, Mental Health Bureau of Clinical Services; CHARLOTTE WRAY, Therapy, Mental Health Bureau of Clinical Services; CALDER LNU, Therapy, Mental Health Bureau of Clinical Services; SHYDER LNU, Therapy, Mental Health Bureau of Clinical Services; TERRY JEFFIES, Provider, Mental Health Bureau of Clinical Services,

Defendants - Appellees.

CHASTITY QUINTANA,

Plaintiff - Appellant,

v.

UTAH STATE PRISON; FNU SPOTTS; FNU GRAHAM; FNU SMITH; TAMMIE WESTERMAN; FNU WHITNEY; FNU LARSEN; FNU BURTON; FNU STARKS; FNU NAUGARATO; FNU DIMETRE; MALAN WHITE; FNU MELONEY; FNU CORL; FNU ADAMS,

Defendants - Appellees.

CHASTITY QUINTANA,

Plaintiff - Appellant,

v.

RAY SHEWY; EDWIN S. WALL; RON FUJINO; RONDA J. WOOLSTON; SALT LAKE CITY POLICE DEPARTMENT; FNU BROMLEY, Officer; FNU

No. 23-4064
(D.C. No. 2:20-CV-00093-HCN)
(D. Utah)

No. 23-4065
(D.C. No. 2:20-CV-00092-JNP)
(D. Utah)

HANSEN, Officer; THIRD JUDICIAL DISTRICT COURT, Salt Lake City; RICHARD MCKELVIE, Honr.; RAYMOND S. SHUEY; ADULT PROBATION AND PAROLE, 3rd Region; RODNEY WIRTHLIN, Investigator; DOMAIN SUMMARY, Investigator; DON AVIS, Approved by D4292018-CS-16; BOARD OF PARDONS AND PAROLE, State of Utah; CARRIE L. COCHRAN, Chair; CLARK A. HARMS, Member; GREG E. JOHNSON, Member; ANGELA F. MICKLOS, Member; DENISE PORTER, Member; J. BROWN, Support Service Coordinator; CHYLEEN A. ARBON, Board Chair,

Defendants - Appellees.

ORDER

Before **BACHARACH, MORITZ, and ROSSMAN**, Circuit Judges.

Pro se Appellant Chastity Quintana seeks to appeal district court orders and/or judgments entered in four different 42 U.S.C. § 1983 actions in 2021. We raise *sua sponte* the question of whether this court has jurisdiction to consider these appeals.

“A timely notice of appeal is both mandatory and jurisdictional.” *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006) (citation omitted). In civil cases such as these, a notice of appeal “must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.” Fed. R. App. P. 4(a)(1)(A).

Although Appellant is proceeding *pro se*, she still must comply with the time

requirements in the procedural rules. *See Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

23-4062, 23-4063, and 23-4065

In these cases, the district court entered orders and judgments dismissing Appellant's 42 U.S.C. § 1983 actions without prejudice for failure to prosecute and failure to comply with court orders on September 14, 2020. Appellant filed motions to reopen each of the cases on September 22, 2020, and the district court denied them for failure to prosecute on August 12, 2021. Accordingly, pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, her notices of appeal were due on or before September 13, 2021. *See* Fed. R. App. P. 26(a)(1). However, Appellant's notices of appeal were not received by the district court until May 8, 2023—602 days after the deadline to file the notices of appeal passed.

23-4064

In this case, the district court entered an order and judgment dismissing Appellant's 42 U.S.C. § 1983 action with prejudice as a sanction for failure to prosecute and failure to comply with court orders on November 5, 2021. Accordingly, pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, her notice of appeal was due on or before December 6, 2021. *See* Fed. R. App. P. 26(a)(1). However, Appellant's notice of appeal was not received by the district court until May 8, 2023—518 days after the deadline to file the notice of appeal passed.

“[T]his court may not extend the time for filing a notice of appeal.” *Savage v. Cache Valley Dairy Ass'n*, 737 F.2d 887, 889 (10th Cir. 1984). “Only the district court

may do so and only under limited circumstances and for a limited time.” *Alva v. Teen Help*, 469 F.3d 946, 950 (10th Cir. 2006) (citing 28 U.S.C. § 2017(c); Fed. R. App. P. 4(a)(5)). Here, Appellant did not request an extension of time from the district court within which to file her notices of appeal, *see* Fed. R. App. P. 4(a)(5)(A), and her opportunity to do so has expired, *see* Fed. R. App. P. 4(a)(5)(A)(i) (requiring a party to move for an extension of time to file a notice of appeal “no later than 30 days after” he was otherwise required to file the notice).

Appellant likewise appears ineligible for an order reopening the time to file her notices of appeal. *See* Fed. R. App. P. 4(a)(6) (providing that district court may reopen the time to file an appeal, “but only if all the [specified] conditions are satisfied”).

Thus, Appellant may not avail herself of any exception to the late appeals. The United States Supreme Court has made clear that federal courts “ha[ve] no authority to create equitable exceptions to jurisdictional requirements.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Therefore, “[t]he time limit has run and we are without jurisdiction under the facts of [these] case[s].” *Jenkins v. Burtzloff*, 69 F.2d 460, 464 (10th Cir. 1995).

APPEALS DISMISSED.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



By: Candice Manyak
Counsel to the Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CHASTITY QUINTANA,

Plaintiff,

v.

RODNEY WIRTHLIN et al.,

Defendants.

**MEMORANDUM DECISION
& DISMISSAL ORDER**

Case No. 2:20-CV-156-TS

District Judge Ted Stewart

In an Order dated June 12, 2020, the Court required Plaintiff to within thirty days pay an initial partial filing fee (IPFF) of \$25.80 and submit a consent to have the remaining fee collected in increments from Plaintiff's inmate account. (ECF No. 8.) To date, Plaintiff has not complied, nor has Plaintiff responded to the Order. Plaintiff instead filed what appears to be a motion for compassionate release. The Court last heard from Plaintiff nearly three months ago.

The federal compassionate-release statute, allows a district court to "reduce [a] term of imprisonment" of prisoners in federal custody "upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 USCS § 3582(c)(1)(A) (2020). Thus, a court may order an inmate to be released if the court concludes that "extraordinary and compelling reasons warrant such a reduction; . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Id.* However, Plaintiff is in state custody; the

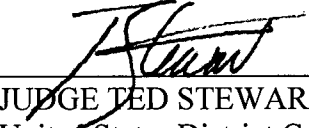
Court "does not have the authority to order a compassionate release from state custody, which is a matter of state law." *Puerner v. Smith*, No. 09-C-1051, 2009 U.S. Dist. LEXIS 120169, at *3 (E.D. Wis. Dec. 3, 2009); *see also Teague v. Colo.*, No. 20-CV-1425-PAB, 2020 U.S. Dist. LEXIS 109733, at *14 (D. Colo. June 22, 2020); *Williams v. Keiser*, No. 17-CV-1040, 2020 U.S. Dist. LEXIS 74397, at *3-4 (W.D.N.Y. Apr. 28, 2020) (denying motion for compassionate release when inmate in state custody); *United States v. Tillisy*, No. CR13-310 RSL-MLP, 2020 U.S. Dist. LEXIS 68086, at *3-4 (W.D. Wash. Apr. 17, 2020) (same). Plaintiff's motion for compassionate release is therefore denied.

IT IS ORDERED that:

- (1) Plaintiff's motion for compassionate relief is **DENIED**. (ECF No. 9.)
- (2) Because Plaintiff has failed to comply with the Court's order to file an IPFF and consent, and has failed to prosecute this case, *see* DUCivR 41-2, Plaintiff's complaint is **DISMISSED** without prejudice.
- (3) This action is **CLOSED**.

Dated September 14, 2020

BY THE COURT:



JUDGE TED STEWART
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CHASTITY QUINTANA,

Plaintiff,

v.

RODNEY WIRTHLIN et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 2:20-CV-156-TS

District Judge Ted Stewart

IT IS ORDERED AND ADJUDGED

that Plaintiff's action is dismissed without prejudice for failure to prosecute.

DATED this 14th day of September, 2020.

BY THE COURT:



JUDGE TED STEWART
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CHASTITY QUINTANA,

Plaintiff,

v.

RODNEY WIRTHLIN et al.,

Defendants.

ORDER

Case No. 2:20-CV-156 TS

District Judge Ted Stewart

In this prisoner civil rights case, 42 U.S.C.S. § 1983 (2021), Plaintiff originally applied as a prisoner, (ECF No. 1), to proceed *in forma pauperis* (IFP), 28 U.S.C.S. § 1915 (2021). When Plaintiff did not comply with the Court's requirements to pay an initial partial filing fee and file a consent to collection of the remaining fee, this case was dismissed. (ECF No. 10.)


Plaintiff then filed a motion to re-open the case, (ECF No. 12), and documentation of a new address, possibly indicating release from incarceration, (ECF No. 18). On June 28, 2021, Plaintiff was ordered to within thirty days file a letter indicating whether Plaintiff is incarcerated and confirming continued interest in pursuing the motion to re-open the case. Plaintiff has not responded. Nor has Plaintiff since updated Plaintiff's address with the Court as required. *See* D. Utah Civ. R. 83-1.3(e) ("In all cases, counsel and parties appearing *pro se* must notify the clerk's office immediately of any change in address, email address, or telephone number.").

IT IS THEREFORE ORDERED that--for failure to follow the Court's order and to prosecute this case further--Plaintiff's motion to reopen this case is DENIED. (ECF No. 12.)

This action remains CLOSED.

DATED this 12th day of August, 2021.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CHASTITY QUINTANA,

Plaintiff,

v.

RODNEY WIRTHLIN et al.,

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BY THE COURT:



TED STEWART
United States District Judge