

United States Court of Appeals  
for the Fifth Circuit

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No. 24-50210

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 25, 2024

Lyle W. Cayce  
Clerk

JOHN CORNELIUS MONTGOMERY,

*Petitioner—Appellant,*

*versus*

JOHN W. SEGREST,

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:12-MC-263

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**UNPUBLISHED ORDER**

Before STEWART, GRAVES, and OLDHAM, *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). Petitioner is a vexatious litigant with a history of sanctions and frivolous filings. The notice of appeal does not comply with the provisions of Rule 3 of the Federal Rules of Appellate Procedure, which require that the notice identify the judgment, order, or part thereof, that is being appealed.

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*See FED. R. APP. P. 3(c).* As such, the court is left to speculate as to what exactly Petitioner seeks to appeal.

Should Petitioner be attempting to appeal the original denial of his habeas petition, pursuant to 28 U.S.C. § 2107(a) and FED. R. APP. P. 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment. Here, the petition was denied October 5, 2012. Petitioner's *pro se* notice of appeal was filed May 18, 2024, over a decade after the petition was denied. 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).

Petitioner may be trying to appeal his most recent motion to reopen his petition filed May 9, 2023. "Federal appellate courts have jurisdiction over appeals only from (1) a final decision under 28 U.S.C. § 1291; (2) a decision that is deemed final due to jurisprudential exception or that has been properly certified as final pursuant to FED. R. CIV. P. 54(b); and (3) interlocutory orders that fall into specific classes, 28 U.S.C. § 1292(a), or that have been properly certified for appeal by the district court, 28 U.S.C. § 1292(b)." *Askanase v. Livingwell, Inc.*, 981 F.2d 807, 809-10 (5th Cir. 1993). Petitioner's motion to reopen remains pending before the district court. It is, therefore, not appealable.

To the extent he is attempting to appeal some other issue, examination of the district court's docket sheet shows no order that would be currently appealable.

Accordingly, the appeal is DISMISSED for want of jurisdiction.