

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 9, 2024

Christopher M. Wolpert
Clerk of Court

SEAN CHRISTOPHER OWEN,

Petitioner - Appellant,

v.

KRISTIN KEISEL¹, Warden,

Respondent - Appellee.

No. 24-4065
(D.C. No. 2:18-CV-00434-DBB)
(D. Utah)

ORDER

Before MATHESON, PHILLIPS, and MORITZ, Circuit Judges.

We raise *sua sponte* the question of whether this court has jurisdiction to consider this appeal. *See Amazon, Inc. v. Dirt Camp, Inc.*, 273 F.3d 1271, 1274 (10th Cir. 2001) (noting that we have an independent duty to examine our own jurisdiction). Sean C. Owen, a Utah state prisoner proceeding pro se, seeks to appeal the district court's March 27, 2024 order and judgment dismissing his 28 U.S.C. § 2254 habeas corpus petition. Upon consideration, we dismiss this appeal for lack of jurisdiction.

Mr. Owen's notice of appeal, filed by the district court on May 31, 2024, identifies the district court case name and number and states "I believe I need to file some kind of notice of appeal, which I hope this serves as." [ECF No. 54]. The notice of appeal did not

¹ Kristin Keisel has been substituted for Robert Powell pursuant to Fed. R. App. 43(c)(2).

designate a specific judgment or order for appeal. This court directed Mr. Owen to address the jurisdictional requirements that a notice of appeal designate the judgment or order for appeal and that a notice of appeal be timely filed from entry of the judgment or appealable order. Mr. Owen filed a response stating, “The appellant is appealing the judgment/order issued on 26 March, 2024, dismissing the case.”² (Resp. at 1). He further asserts that “the appellant did not receive the judgment/order issued by the [district] court on March 26, 2024, in a timely manner, thus was unable to file the notice of appeal in a timely manner. He did, however, file the notice immediately upon receiving the judgment/order.” (Resp. at 3).

Federal Rule of Appellate Procedure 3(c)(1)(B) requires that the notice of appeal “designate the judgment—or the appealable order—from which the appeal is taken.” The purpose of Rule 3 is to provide “sufficient notice to other parties and the courts,” and “Rule 3’s dictates are jurisdictional in nature, and their satisfaction is a prerequisite to appellate review.” *Smith v. Barry*, 502 U.S. 244, 248 (1992). Mr. Owen’s notice of appeal does not designate any order or judgment and it is jurisdictionally defective.

Further, even considering Mr. Owen’s response that he is appealing the order and judgment dismissing his § 2254 case, we lack jurisdiction over the appeal because the notice of appeal is untimely.

² March 26, 2024 is the date the order and judgment were signed by the district court, but both the order and judgment were entered on March 27, 2024. [ECF. Nos. 49, 50].

The timely filing of the notice of appeal in a civil case is both mandatory and jurisdictional. *See Bowles v. Russell*, 551 U.S. 205, 209 (2007). Federal habeas corpus cases are civil proceedings. *See Browder v. Dir., Dep’t of Corr. of Ill.*, 434 U.S. 257, 269 (1978). In a proceeding under 28 U.S.C. § 2254, the notice of appeal must be filed within 30 days after entry of the order or judgment appealed from. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A); *see Manco v. Werholtz*, 528 F.3d 760, 762 (10th Cir. 2008) (order) (applying 30-day limit to § 2254 proceeding in dismissing untimely appeal for lack of jurisdiction). “[T]his Court has no authority to create equitable exceptions to jurisdictional requirements.” *Bowles*, 551 U.S. at 214.

The district court entered the order and judgment dismissing Mr. Owen’s § 2254 case on March 27, 2024. The mandatory 30-day deadline for filing the notice of appeal expired on April 26, 2024. Mr. Owen mailed his notice of appeal from his correctional institution on May 28, 2024, *see* Fed. R. App. P. 4(c)(1)(A)(ii) (for an inmate confined in an institution, evidence such as postmark showing that the notice of appeal was deposited in institution’s mail system is evidence of filing), and it was filed by the district court on May 31, 2024. Using the earlier filing date, the notice of appeal is untimely.

Mr. Owen asserts that he did not timely receive the district court’s order and judgment and filed the notice of appeal immediately upon receiving them. Even assuming Mr. Owen received the district court’s order and judgment on May 28, 2024 (the day he mailed his notice of appeal), his avenue for relief was to file a motion to reopen the time to appeal in the district court. *See* Fed. R. App. P. 4(a)(6) (allowing the district court to reopen the time to file an appeal only if certain conditions are met, including that

appellant files a motion to reopen the time to file an appeal “within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice . . . of the entry, *whichever is earlier*”) (emphasis added). Under Rule 4(a)(6), any motion to reopen the time to appeal was required to be filed in the district court by June 11, 2024—within 14 days after Mr. Owen received notice of the judgment he seeks to appeal. Here, Mr. Owen did not move to reopen the time to appeal in the district court and he is now beyond the time to do so. Although Mr. Owen is proceeding pro se, he still must comply with the procedural rules and requirements applicable to all litigants. *See Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

Because the notice of appeal is untimely to appeal the March 27, 2024 order and judgment dismissing Mr. Owen’s 28 U.S.C. § 2254 case, we lack jurisdiction to consider this appeal.

APPEAL DISMISSED.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk