

Appendix Sheet

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[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12090

Non-Argument Calendar

NORRIS WILLIAMS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:19-cv-00271-SPC-M_M,
Bkcy No. 2:15-cr-00149-SPC-KCD-1

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out of time. *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010). A notice of appeal in a civil case must be filed within 60 days after the judgment or order appealed from is entered if one of the parties to the action is the United States, as here. 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B). Under the prison mailbox rule, a notice of appeal filed by a *pro se* prisoner is deemed filed on the date the prisoner delivers it to prison authorities for mailing. See Fed. R. App. P. 4(c); *Jeffries v. United States*, 748 F.3d 1310, 1314 (11th Cir. 2014).

A party may move the district court to reopen the time period to appeal. Fed. R. App. P. 4(a)(6); 28 U.S.C. § 2107(c). Under Rule 4(a)(6), a district court may reopen the time to appeal for a period of 14 days if: (1) the court finds that the moving party did not receive notice under Rule 77(d) of the entry of the judgment or order to be appealed within 21 days after entry; (2) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Rule 77(d) of the entry, whichever is earlier; and (3) the court finds that no party would be prejudiced. Fed. R. App. P. 4(a)(6); 28 U.S.C. § 2107(c).

As an initial matter, Williams's notice of appeal is untimely to appeal from the district court's February 2, 2024 order denying his motion for reconsideration. The 60-day statutory time limit required Williams to file his notice of appeal on or before April 2, 2024. See Fed. R. App. P. 4(a)(1)(B). However, Williams did not file his notice of appeal by that date, so it is untimely to appeal from

the order denying his motion for reconsideration. Therefore, Williams cannot challenge the district court's February 2 order unless we find that the district court abused its discretion in denying Williams's construed Rule 4(a)(6) motion. *See McDaniel*, 292 F.3d at 1305.

We conclude that the district court did not abuse its discretion by denying Williams's construed Rule 4(a)(6) motion. Williams does not dispute the court's finding that he received notice of the February 2 order on May 28, 2024, meaning that he had until June 11, 2024 to move for relief under Rule 4(a)(6). *See Fed. R. App. P. 4(a)(6)*. The district court reasonably found that Williams filed his notice of appeal after June 11, because he included with the notice of appeal a certificate of service in which he declared, under penalty of perjury, that he provided his notice of appeal to prison authorities for mailing on June 14, 2024. This conclusion is also supported by the June 14 postmark on the envelope in which Williams's notice of appeal and certificate of service were mailed. Accordingly, the district court did not commit a clear error of judgment in finding that Williams's construed Rule 4(a)(6) motion was deemed filed on June 14 under the prison mailbox rule. Therefore, the appeal from the district court's February 2, 2024 order is untimely and we lack jurisdiction to review that order. *See Green*, 606 F.3d at 1300.

Accordingly, we AFFIRM the district court's August 1, 2024 order denying Williams's construed Rule 4(a)(6) motion and DISMISS the untimely appeal from the court's February 2, 2024

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order for lack of jurisdiction. Williams's motion to file an out-of-time reply is GRANTED insofar as we considered his reply. All other pending motions are DENIED AS MOOT.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NORRIS WILLIAMS,

Petitioner,

v.

Case No.: 2:19-cv-271-SPC-MRM

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

Before the Court is Petitioner Norris Williams' Motion for Consideration Under Federal Rule of Civil Procedure 60(b)(6) (Doc. 27). The Court denied Williams' motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 on October 30, 2020. (Doc. 17). The Eleventh Circuit denied Williams' request for a certificate of appealability because Williams failed to show he had a claim reasonable jurists would find debatable. (Doc. 25). The Supreme Court denied certiorari. (Doc. 26). Now, more than three years after entry of judgment, Williams seeks relief from the judgment under Rule 60(b). Williams argues the Court committed an error of law by declining to hold an evidentiary hearing, and he asks the Court to hold a hearing so he can relitigate his § 2255 motion.

Rule 60(b) allows courts to relieve a party from a final judgment for certain enumerated reasons, including: “(1) mistake, inadvertence, surprise, or excusable neglect” and “(6) any other reason that justifies relief.” Williams purports to seek relief under Rule 60(b)(6), but he cannot. “Rules 60(b)(1) and (6) are mutually exclusive, and a court cannot grant relief under (b)(6) for any reason which the court could consider under (b)(1).” *MacPhee v. MiMedx Group, Inc.*, 73 F.4th 1220, 1251 (11th Cir. 2023). Because Williams seeks relief from a final judgment based on an alleged mistake in the application of law, he must proceed under (b)(1). *Id.* But under either subsection, Williams’ motion is untimely. Rule 60(b) motions “must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1). Williams did not file his motion within a year after entry of judgment or within a reasonable time.

Williams also asks the undersigned judge to disqualify herself if unable to make an impartial decision. That request is denied. The Court’s denial of Williams’ § 2255 motion was based on the law and the facts before the Court, not bias or prejudice. Indeed, the Eleventh Circuit held that no reasonable jurist would find Williams’ claims of error debatable. The Court has likewise considered the present motion impartially and objectively. There are no grounds for recusal here. *See United States v. Akel*, 610 F. App’x 875, 877 (11th

Cir. 2015) (“Just because those rulings were not in Akel’s favor does not mean that they establish any bias or prejudice.”).

Accordingly, Petitioner Norris Williams’ Motion for Consideration Under Federal Rule of Civil Procedure 60(b)(6) (Doc. 27) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida on February 2, 2024.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record

Appendix Sheet C

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JUDGMENT

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It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: April 15, 2025

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: June 9, 2025

In the
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No. 24-12090

NORRIS WILLIAMS,

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UNITED STATES OF AMERICA,

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Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:19-cv-00271-SPC-M_M

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

**Additional material
from this filing is
available in the
Clerk's Office.**