

December 6, 2010

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**Elisabeth A. Shumaker
Clerk of Court

MIKEAL GLENN STINE,

Petitioner - Appellant,

v.

RON WILEY, Warden ADX Florence,

Respondent - Appellee.

No. 10-1189
(D.C. No. 1:09-CV-00933-ZLW)
(D. Colo.)**ORDER**Before **TACHA, MURPHY**, and **HARTZ**, Circuit Judges.

This appeal is before the court based on a motion to dismiss filed by Appellee-Defendant Ron Wiley as Warden, a response by Appellant-Petitioner Mikeal Stine, and the district court's October 18, 2010 Order entered upon partial remand from the court.

In a June 26, 2009 Order and separate judgment, the district court denied Mikeal Stine's 28 U.S.C. § 2241 petition and dismissed the action without prejudice for failure to exhaust administrative remedies. Petitioner Stine, a federal prisoner proceeding *pro se*, appeals. We dismiss for lack of jurisdiction. The notice of appeal is untimely.

Pro se appellants must comply with the requirements of the Federal Rules of Appellate Procedure that govern all litigants. See *Ogden v. San Juan County*, 32 F.3d 452,

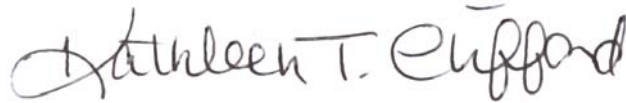
455 (10th Cir. 1994). The sixty-day deadline under Fed. R. App. P. 4(a)(1)(B) for the filing of a timely notice of appeal in this civil case expired on August 25, 2009. Petitioner's notice of appeal was filed in the district court on April 28, 2010, which was approximately eight months past the sixty-day filing deadline. Consequently, Respondent filed a motion to dismiss in this court based on the untimely appeal. In response, Petitioner contended that on or about September 2, 2009 he delivered a "verified notice of appeal" to prison officials for mailing. He attached a copy of this "verified notice of appeal," which contained a "certificate of service" date of September 2, 2009, to his response, arguing that prison officials were holding his mail. A review of the district court docket revealed that no notice of appeal was filed on or about September 2, 2009.

In a June 28, 2010 Order, the court partially remanded the case to the district court for a determination of whether Petitioner Stine delivered a "verified notice of appeal" to prison officials on or about September 2, 2009 for filing in the district court. Upon remand, the district court entered an exceptionally thorough and persuasive order on October 18, 2010 holding that Petitioner failed to provide sufficient evidence that he delivered a "verified notice of appeal" to prison officials on September 2, 2009. As a result, this court must rely on the April 28, 2010 date that Petitioner's notice of appeal was filed in the district court, which was well beyond Rule 4(a)(1)(B)'s filing deadline.

The time limit for filing a notice of appeal in a civil case is a "jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Petitioner's notice of appeal is untimely. The court lacks jurisdiction.

Respondent's motion to dismiss is **GRANTED**. This appeal is **DISMISSED** for lack of appellate jurisdiction. All pending motions are **DENIED**.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in dark ink, reading "Kathleen T. Clifford". The signature is written in a cursive, flowing style with a large initial 'K'.

Kathleen T. Clifford
Attorney - Deputy Clerk