

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 5, 2014

Elisabeth A. Shumaker
Clerk of Court

NICOIS M. SMITH,

Petitioner - Appellant,

v.

OKLAHOMA COUNTY,

Respondent - Appellee.

No. 14-6162
(D.C. No. 5:13-CV-00525-C)

ORDER

Before **KELLY**, **TYMKOVICH**, and **MCHUGH**, Circuit Judges.

We raise *sua sponte* the question of whether this Court has jurisdiction to consider this appeal. On August 1, 2014, Nicois Smith filed a *pro se* notice of appeal in case number 5:13-cv-00525-C in the United States District Court for the Western District of Oklahoma. That notice of appeal does not expressly identify the order(s) from which Mr. Smith seeks to appeal. Given Mr. Smith's prior appeal of the district court's dismissal of the underlying § 2254 petition, the Court assumes that he now seeks to appeal one or both of the only orders subsequently issued by the district court: a January 28, 2014 order and/or a April 9, 2014 order striking a variety of letters, notices and other documents Smith has filed since the dismissal of his appeal.

The timely filing of a notice of appeal is both mandatory and jurisdictional. *Bowles v. Russell*, 551 U.S. 205, 214 (2007). In a civil case, the notice of appeal must be

filed “within 30 days after the entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). The district court entered its orders striking Mr. Smith’s documents case on January 28, 2014 and April 9, 2014. Pursuant to Fed. R. App. P. 4(a)(1)(A), Mr. Smith’s notice of appeal was due on or before February 27, 2014 for the first order and on May 9, 2014 for the second order. The notice of appeal was not filed until August 1, 2014.

Because Mr. Smith’s notice of appeal is untimely, we lack jurisdiction to consider this appeal. Accordingly, this appeal is dismissed.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read 'Chris Wolpert', with a long horizontal stroke extending to the right.

by: Chris Wolpert
Chief Deputy Clerk