

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 8, 2015

Elisabeth A. Shumaker
Clerk of Court

COREY BURGESS,

Plaintiff - Appellant,

v.

CHARLES DANIELS; PAUL A.
KASTNER; PAUL M. LAIRD; CHARLES
E. SAMUELS; MATT THOMPSON;
EXINA; J.A. KELLER; ERIC H.
HOLDER, JR.; U.S. D.O.J./F.B.O.P.,

Defendants - Appellees.

No. 15-1307
(D.C. No. 1:13-CV-02191-PAB-CBS)
(D. Colo.)

ORDER

Before **LUCERO**, **MATHESON**, and **McHUGH**, Circuit Judges.

Corey Burgess seeks to appeal the district court's dismissal of his prisoner civil rights suit. We raise *sua sponte* the question of whether this court has jurisdiction to consider this appeal, given the timing of Burgess's notice of appeal.

The timely filing of a notice of appeal is both mandatory and jurisdictional. *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Because a United States officer and agency were among the defendants Burgess sued, the notice of appeal was due "within 60 days after entry of the judgment or order appealed from" Fed. R. App. P. 4(a)(1)(B). The district court entered its judgment on December 29, 2014. The notice of appeal was due,

therefore, no later than February 27, 2015. Burgess filed a notice of change of address and notice of appeal well beyond this deadline, on August 27, 2015.

Although the district court is authorized to extend or reopen the time to appeal if certain conditions are satisfied, the deadline for filing a motion requesting either form of relief had expired long before Burgess filed his notice of change of address and notice of appeal. *See* Fed. R. App. P. 4(a)(5) (requiring a motion for extension of time to be filed no later than 30 days after the appeal deadline expires); Fed. R. App. P. 4(a)(6) (requiring a motion to reopen the time to appeal to be filed within 180 days after entry of judgment or within 14 days after the moving party receives notice of the entry, whichever is earlier). In his August 27, 2015 notice of change of address, Burgess contends that he notified the district court of his change of address several times between March 2015 and August 2015, but none of Burgess's letters to the district court were captioned for this case. Moreover, changes to his address between March 2015 and August 2015 do not address Burgess's failure to file a notice of appeal from the December 29, 2014 judgment by the February 27, 2015 deadline.

Because Burgess's notice of appeal is untimely and there are no means by which it could be deemed timely, this court lacks jurisdiction to consider this appeal.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk