

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 3, 2016

Elisabeth A. Shumaker
Clerk of Court

LAZARO AGUILAR,

Plaintiff - Appellant,

v.

COLORADO DEPARTMENT OF
CORRECTIONS; COLORADO STATE
PENITENTIARY,

Defendants - Appellees.

No. 16-1136
(D.C. No. 1:15-CV-01713-LTB)
(D. Colo.)

ORDER

Before **BRISCOE**, **LUCERO**, and **HOLMES**, Circuit Judges.

In a civil case in which the United States is not a party, a notice of appeal must be filed within 30 days of entry of the order being appealed. *See* 28 U.S.C. § 2107(a) (providing that a notice of appeal in a civil matter must be filed within 30 days of entry of judgment); Fed. R. App. P. 4(a)(1)(A) (same).

This court does not have the discretion to allow an untimely notice of appeal; a timely notice of appeal in a civil case is both mandatory and jurisdictional. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007). The district court dismissed the underlying case on January 28, 2016 and also entered separate judgment that day. Appellant filed a notice of appeal more than 30 days after the January 28, 2016 judgment. Appellant now asserts that he filed a motion requesting an extension of time to file an appeal in this court within 30

days of the January 28, 2016 judgment and that this court received but did not process the motion. However, Appellant previously acknowledged that this court advised him that there is no record of receipt of any motions from him in February, 2016.

Because the notice of appeal is beyond Federal Rule of Appellate Procedure's 4(a)(1)(A)'s 30-day period, it is untimely, and the court lacks jurisdiction over this appeal.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Lindy Lucero Schaible", written in a cursive style.

by: Lindy Lucero Schaible
Counsel to the Clerk