

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 19, 2016

Elisabeth A. Shumaker
Clerk of Court

MICHAEL WAYNE BINGHAM, Native
American "Chocta" National - "Texan"
Stateless - Nonresident Non-Taxpayer
Transient Choctaw,

Petitioner - Appellant,

v.

TRAVIS TRANI, Warden, CDOC; THE
ATTORNEY GENERAL OF THE STATE
OF COLORADO,

Respondents - Appellees.

No. 16-1154
(D.C. No. 1:15-cv-01229-LTB)
(D. Colo.)

ORDER

Before **GORSUCH**, **HOLMES**, and **MORITZ**, Circuit Judges.

Petitioner Michael Wayne Bingham appealed the district court's order and final judgment dismissing his habeas corpus petition. The clerk entered an order to show cause as to why the appeal should not be dismissed as untimely filed. In response, Mr. Bingham filed in the district court a motion for relief from the untimely notice of appeal, but the district court declined to provide relief. Upon consideration, we have concluded that we are without jurisdiction to consider this untimely appeal.

Taking an appeal within the prescribed time is required to convey jurisdiction to this court. *Bowles v. Russell*, 551 U.S. 205, 209 (2007). This court has no authority to

make equitable exceptions to jurisdictional requirements. *Id.* at 216. Although Mr. Bingham is proceeding *pro se*, he must comply with the same procedural requirements as all other litigants. *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007).

In this case, the district court's order dismissing Mr. Bingham's habeas petition and final judgment were entered on December 28, 2015. A timely notice of appeal had to be filed by January 27, 2016. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal in civil case must be filed within 30 days after entry of judgment). The notice of appeal was not filed until May 2, 2016 – more than three months after the filing deadline expired.

Mr. Bingham's only potential remedy was to ask the district court to excuse his untimely filing, which he did. *See* 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(5) & (a)(6). But the district court denied Mr. Bingham's request for either an extension of time to appeal or to file an appeal out of time. Mr. Bingham's untimely notice of appeal is therefore unexcused. In sum, "[t]he time limit has run and we are without jurisdiction under the facts of this case." *Jenkins v. Burtzloff*, 69 F.2d 460, 464 (10th Cir. 1995).

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk