

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 30, 2018

Elisabeth A. Shumaker  
Clerk of Court

ARICK JUSTIN RINALDO,

Plaintiff - Appellant,

v.

THE STATE OF COLORADO; BILL  
ELDER, Sheriff El Paso County Colorado;  
JANET KING, unknown personnel of the  
CJC detention center, and bailiffs; DAVID  
GILBERT, a Judge of the 4th District, El  
Paso County Colorado,

Defendants - Appellees.

No. 18-1074  
(D.C. No. 1:17-CV-01582-LTB)  
(D. Colo.)

ORDER

Before **MATHESON**, **PHILLIPS**, and **EID**, Circuit Judges.

Pro se plaintiff Arick Justin Rinaldo appeals the district court's order and separate judgment dismissing the underlying case. The notice of appeal was filed one day after the deadline to file a notice of appeal expired. This court challenged whether we have jurisdiction to consider the appeal, directing the appellant to file a response. Upon consideration of the appellant's response, the record for this appeal, and the applicable law, we conclude that this court lacks jurisdiction to consider the appeal.

"This court can exercise jurisdiction only if a notice of appeal is timely filed. A timely notice of appeal is both mandatory and jurisdictional." *Allender v. Raytheon*

*Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006) (quotation omitted). A notice of appeal in a civil case must be filed within 30 days after the judgment or order appealed from is entered. Fed. R. App. P. 4(a)(1)(A). Although the appellant is proceeding *pro se*, he must comply with the same procedural requirements that govern other litigants. *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007); *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

In this case, the district court's judgment was entered on January 29, 2018. To be timely, the notice of appeal should have been filed by February 28, 2018. The notice of appeal was filed on March 1, 2018, one day after the filing deadline expired.

The appellant's response to the court's order to show cause cannot save this untimely appeal. The United States Supreme Court has made clear that federal courts "ha[ve] no authority to create equitable exceptions to jurisdictional requirements." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The district court stated in its final dismissal order that the appellant had been released from custody, which the appellant conceded in his memorandum brief filed in this court, so the prison mailbox rule cannot be applied. Fed. R. App. P. 4(c) (requiring inmate "confined" in institution with legal mail system to use that system to invoke benefit of rule). The appellant's only potential avenue for relief from the untimely filing was in the district court, but he did not pursue this remedy. 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(5). As a result, "[t]he time limit has run and we are without jurisdiction under the facts of this case." *Jenkins v. Burtzloff*, 69 F.3d 460, 464 (10th Cir. 1995).

The appeal is dismissed for lack of jurisdiction.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink that reads "Lara Smith". The signature is written in a cursive, flowing style.

by: Lara Smith  
Counsel to the Clerk