

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 22, 2019

Elisabeth A. Shumaker
Clerk of Court

THEODORE DEAN ACOSTA,

Plaintiff - Appellant,

v.

THE UNITED STATES GOVERNMENT,

Defendant - Appellee.

No. 19-1166
(D.C. No. 1:18-CV-00355-LTB)
(D. Colo.)

ORDER

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

Appellant Theodore D. Acosta filed a pro se notice of appeal on May 6, 2019, seeking review of the district court's dismissal order entered on July 2, 2018. The district court entered separate judgment on July 2, 2018.

In a civil case in which the United States is a party, a notice of appeal must be filed within 60 days of entry of the judgment or order being appealed. See 28 U.S.C. § 2107(b) (providing that a notice of appeal in a civil matter must be filed within 60 days of entry of the judgment or order); Fed. R. App. P. 4(a)(1)(B) (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). Although Mr. Acosta filed a motion requesting leave to file a late appeal in the district court, he is beyond the time for obtaining such relief. *See* Fed. R. App. P.

4(a)(5)(A)(i) (providing that the district court may extend the time to file a notice of appeal if “a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires”); *see* Fed. R. App. P. 4(a)(6)(B) (providing that the district court may reopen the time to file an appeal of the judgment or order when a party has not received notice of the entry of a judgment or order if “the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, *whichever is earlier*”) (emphasis added).

Because the notice of appeal is untimely, this court lacks jurisdiction over this appeal.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Lindy Lucero Schaible".

by: Lindy Lucero Schaible
Counsel to the Clerk