

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 24, 2020

**Christopher M. Wolpert
Clerk of Court**

VICTOR PETER BUCHI,

Plaintiff - Appellant,

v.

STATE OF UTAH, Entities of Federal &
County Corrections; DIVISION OF
HOMELAND SECURITY; GABRIEL
POWERS, MD; ANDREW MCAIN;
UTAH STATE LAW ENFORCEMENT
BUREAU; BILLIE CASPER; MIKE
HADDON; FNU SHARP; LEO LUCY
KING; SCOTT DANIELS,

Defendants - Appellees.

No. 20-4010
(D.C. No. 2:19-CV-00325-CW)
(D. Utah)

VICTOR BUCHI,

Plaintiff - Appellant,

v.

UTAH DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES
ATTORNEY GENERAL,

Defendants - Appellees.

No. 20-4011
(D.C. No. 2:19-CV-00350-DB)
(D. Utah)

VICTOR BUCHI,

Plaintiff - Appellant,

v.

DEPARTMENT OF PROBATION
PAROLE; HOMELAND SECURITY;
SALT LAKE CITY POLICE
DEPARTMENT; SALT LAKE COUNTY
DISTRICT ATTORNEY; UTAH STATE;
FNU HADDON; FNU HALLSTROM;
FNU STROMBERG; ANDREW MCAIN;
FNU JOHNSON; ISSACSAY
PETERSON; FNU ANDERSTAN; FNU
SMITH; FNU TAYLOR; FNU
ROCKWELL; FNU KIMBOL; FNU
BUSWELL,

Defendants - Appellees.

No. 20-4012
(D.C. No. 2:19-CV-00335-JNP)
(D. Utah)

ORDER

Before **TYMKOVICH**, Chief Judge, **BACHARACH** and **MORITZ**, Circuit Judges.

Victor Peter Buchi, a Utah state prisoner proceeding *pro se*, seeks appellate review of the United States District Court for the District of Utah's dismissal of three separate 42 U.S.C. § 1983 actions: (1) *Buchi v. State of Utah, Entities of Fed. & State Corrections, et al.*, No. 2:19-cv-00325-CW (the action underlying Appeal No. 20-4010); (2) *Buchi v. Utah Dep't of Homeland Sec., et al.*, No. 2:19-cv-00350-DB (the action underlying Appeal No. 20-4011); and (3) *Buchi v. Dep't of Probation Parole, et al.*, No. 2:19-cv-00335-JNP (the action underlying Appeal No. 20-4012). These matters are

before this court on: (a) the jurisdictional show cause orders it issued on January 24, 2020 in each respective appeal; and (b) the response Mr. Buchi filed to the order issued in Appeal No. 20-4011.

“This Court can exercise jurisdiction only if a notice of appeal is timely filed.” *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006). Mr. Buchi’s pro se status does not affect this rule, *see Mayfield v. U.S. Parole Comm’n*, 647 F.2d 1053, 1055 (10th Cir. 1981) (dismissing pro se appeal filed three days late), and this court has no authority to make equitable exceptions to jurisdictional requirements. *See Bowles v. Russell*, 551 U.S. 205, 216 (2007).

In the action underlying Appeal No. 20-4010, the district court dismissed the action and entered final judgment on November 6, 2019. [ECF Nos. 14-15 in No. 2:19-cv-00325-CW]. Although Mr. Buchi filed two post-judgment motions, neither of those motions were filed within 28 days after the district court entered its judgment and thus do not toll or extend the time Mr. Buchi had to file a notice of appeal from the judgment itself. *See Fed. R. App. P. 4(a)(4)(A)(vi)*. Accordingly, Mr. Buchi’s notice of his intent to appeal the judgment was due on or before December 6, 2019. *See Fed. R. App. P. 4(a)(1)(A)* (notice of appeal in a civil case “must be filed with the district clerk within 30 days after entry of the judgment or order appealed from”). However, the district court did not receive Mr. Buchi’s notice of appeal until January 24, 2020. [ECF No. 17 in No. 2:19-cv-00325-CW].

In the action underlying Appeal No. 20-4011, the district court dismissed the case and entered final judgment on October 7, 2019. [ECF Nos. 7-8 in No. 2:19-cv-00350-

DB]. Although Mr. Buchi filed a motion to reinstate the case, he did not file that motion within 28 days after the district court entered its judgment and thus it does not toll or extend the time he had to file a notice of appeal from the judgment itself. *See* Fed. R. App. P. 4(a)(4)(A)(vi). Accordingly, Mr. Buchi's notice of his intent to appeal the judgment was due on or before December 6, 2019. *See* Fed. R. App. P. 4(a)(1)(B) (notice of appeal in civil case in which a United States officer is a defendant must be filed within 60 days after entry of judgment). However, the district court did not receive Mr. Buchi's notice of appeal until January 24, 2020. [ECF No. 9 in No. 2:19-cv-00350-DB].

Finally, in the action underlying Appeal No. 20-4012, the district court dismissed the action and entered final judgment on October 10, 2019. [ECF Nos. 7-8 in No. 2:19-cv-00335-JNP]. Although Mr. Buchi filed a motion to reinstate the case, he did not file that motion within 28 days after the district court entered its judgment and thus it does not toll or extend the time he had to file a notice of appeal from the judgment itself. *See* Fed. R. App. P. 4(a)(4)(A)(vi). Accordingly, Mr. Buchi's notice of his intent to appeal the judgment was due on or before November 12, 2019. *See* Fed. R. App. P. 4(a)(1)(A); Fed. R. App. P. 26(a)(1)(C). However, the district court did not receive Mr. Buchi's notice of appeal until January 24, 2020. [ECF No. 9 in No. 2:19-cv-00335-JNP].

“[T]his court may not extend the time for filing a notice of appeal.” *Savage v. Cache Valley Dairy Ass’n*, 737 F.2d 887, 889 (10th Cir. 1984). “Only the district court may do so and only under limited circumstances and for a limited time.” *See Alva v. Teen Help*, 469 F.3d 946, 950 (10th Cir. 2006) (citing 28 U.S.C. § 2017(c); Fed. R. App. P. 4(a)(5)). However, Mr. Buchi did not timely request an extension of time from the district

court within which to file his notice of appeal in any one of these actions, *see* Fed. R. App. P. 4(a)(5)(A), and his opportunity to do so has expired. *See* Fed. R. App. P. 4(a)(5)(A)(i) (requiring a party to move for an extension of time to file a notice of appeal “no later than 30 days after” he was otherwise required to file the notice).

Mr. Buchi is likewise ineligible for an order reopening the time to appeal any one or more of these actions. *See* Fed. R. App. P. 4(a)(6) (allowing the district court to reopen the time to file an appeal only if certain conditions are met, including that the would-be appellant files a motion to reopen the time to file an appeal “within 180 days after the judgment . . . is entered or within 14 days after the moving party receives notice . . . of the entry, whichever is earlier” (emphasis added)). In the absence of a timely motion requesting relief under Rule 4(a)(6), the district court is without authority to reopen the time to appeal. *See* Fed. R. App. P. 4(a)(6) (providing that district court may reopen the time to file an appeal, “but only if all the [specified] conditions are satisfied”); *Portley-El v. Milyard*, 364 F. App’x 912, 917 (10th Cir. 2010) (unpublished).

As a result, the time limit to appeal the orders or judgments entered in any one or more of the actions underlying these appeals has run and the court is without jurisdiction to hear them. *See Jenkins v. Burtzloff*, 69 F.2d 460, 464 (10th Cir. 1995). In addition, Mr. Buchi’s failure to respond to the show cause orders issued in Case Nos. 20-4010 and 20-4012 constitute separate and independent grounds for the dismissal of those appeals. *See* 10th Cir. R. 42.1. The court denies any pending requests for relief in all three appeals.

APPEALS DISMISSED.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk

A handwritten signature in black ink, appearing to read "LA Lee".

by: Lisa A. Lee
Counsel to the Clerk