

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 20, 2022

Christopher M. Wolpert
Clerk of Court

CRAIG IVAN GILBERT,

Petitioner - Appellant,

v.

SAM A. CROW,

Respondent - Appellee.

No. 22-3258
(D.C. No. 5:21-CV-03234-SAC)
(D. Kan.)

ORDER

Before **TYMKOVICH**, **MORITZ**, and **CARSON**, Circuit Judges.

This matter is before the court on: (1) the jurisdictional show cause order it issued on November 21, 2022, challenging the timeliness of pro se petitioner-appellant Craig Ivan Gilbert's notice of appeal; and (2) Mr. Gilbert's response to that order. Upon consideration of these filings, the district court docket, and the applicable law, the court dismisses the appeal as untimely filed for the reasons set forth below.

The timely filing of the notice of appeal in a civil case is both mandatory and jurisdictional. *See Bowles v. Russell*, 551 U.S. 205, 209 (2007); *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269 (1978) (holding that federal habeas corpus cases are civil rather than criminal proceedings). In a proceeding under 28 U.S.C. § 2254, the petitioner must file his notice of appeal within 30 days after the district court enters the order or judgment from which the petitioner seeks to appeal. 28 U.S.C. § 2107(a); Fed. R. App.

P. 4(a)(1)(A); *see Manco v. Werholtz*, 528 F.3d 760, 762 (10th Cir. 2008) (order) (applying 30-day time limit to § 2254 proceeding in dismissing untimely appeal for lack of jurisdiction).

“Proceeding *pro se* does not relieve [Gilbert] of the responsibility to learn about and follow the correct procedures to file a notice of appeal.” *Cosby v. Astrue*, 507 F. App’x 819, 821 (10th Cir. 2013) (unpublished). Indeed, this court has “repeatedly insisted that *pro se* parties follow the same rules of procedure that govern other litigants.” *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).

In the action underlying this appeal, the district court entered final judgment in the case underlying this appeal on September 29, 2021. [ECF No. 5]. Accordingly, Gilbert’s notice of his intent to appeal the judgment was due on or before October 29, 2021. *See* Fed. R. App. P. 4(a)(1)(A).

Nearly a year later, Gilbert filed a *Motion to Reinstate Rule 60* [ECF No. 7], which the district court liberally construed as a motion for relief under Fed. R. Civ. P. 60(b) and denied as construed on September 14, 2022 [ECF No. 8]. Accordingly, Gilbert’s notice of his intent to appeal that order was due on or before October 14, 2022. *See* Fed. R. App. P. 4(a)(1)(A). The filing of that motion did not toll the time for Gilbert to file his notice of appeal of the district court’s judgment. *See* Fed. R. App. P. 4(a)(4)(A).

Gilbert signed and dated his notice of appeal as of November 13, 2022, and the envelope in which the notice was sent to the district court is postmarked November 15, 2021. [ECF No. 9]; *see* Fed. R. App. P. 4(c)(1). The district court did not receive Gilbert’s notice of appeal until November 17, 2022. [ECF No. 9].

Even giving Gilbert every benefit of the prison mailbox rule, his notice of appeal is not timely with respect to either the district court's judgment [ECF No. 5] or its order denying Gilbert's post-judgment motion [ECF No. 8]. *See* Fed. R. App. P. 4(a). "The 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).

We deny any pending motions or requests for relief as moot.

APPEAL DISMISSED.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk