FILED
United States Court of Appeals
Tenth Circuit

January 12, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BILLY GENE MARSHALL,

Petitioner - Appellant,

v.

DAVID LOUTHAN,

Respondent - Appellee.

No. 25-5172
(D.C. No. 4:25-CV-00015-GKF-CDL)
(N.D. Okla.)

ORDER

Before **HOLMES**, Chief Judge, **McHUGH**, and **ROSSMAN**, Circuit Judges.

This matter is before us on Appellant Billy Gene Marshall's response to this court's order to show cause why this appeal should not be dismissed for lack of jurisdiction because the notice of appeal was not timely filed.

The timely filing of the notice of appeal is both mandatory and jurisdictional. *Bowles v. Russell,* 551 U.S. 205, 214 (2007). In a proceeding under 28 U.S.C. § 2254, like this one, the notice of appeal must be filed within 30 days after entry of the order or judgment appealed from. *See* 28 U.S.C. § 2107(a) (setting forth deadline for filing appeal in a civil case); *Manco v. Werholtz,* 528 F.3d 760, 761 (10th Cir. 2008) (order) (applying civil time limit to § 2254 proceedings).

In this case, the district court entered judgment on October 10, 2025. Because the thirtieth day fell on Sunday, November 9, 2025, the notice of appeal was due no later

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than November 10, 2025. *See* Fed. R. App. P. 26(a)(1)(C). The district court filed Mr. Marshall's notice of appeal on its docket on November 19, 2025, but it was dated and postmarked November 13, 2025.

In his response to the show cause order, Mr. Marshall argues that under state law, three days are added to the filing deadline so the deadline for filing his notice of appeal was not November 10, 2025 but rather November 13, 2025, the date he mailed his notice of appeal.

The time for filing a notice of appeal in federal court is governed by federal, not state, law. As explained above, under 28 U.S.C. § 2107(a) and Fed. R. App. P. 26(a)(1)(C), the deadline for filing the notice of appeal was November 10, 2025. There is a "prison mailbox" rule in federal court, whereby a notice of appeal is treated as filed on the day it is deposited in an institution's internal mail system if certain requirements are met. *See* Fed. R. App. P. 4(c)(1). But the notice of appeal must be "deposited in the institution's internal mail system *on or before the last day for filing*." *Id.* (emphasis added). Here, Mr. Marshall did not date his notice of appeal until November 13, 2025. Because he did not deposit the notice of appeal in his institution's internal mail system on or before November 10, 2025, his notice of appeal is untimely, and we lack jurisdiction to consider this appeal.

APPEAL DISMISSED.

Entered for the Court

Per Curiam