

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-30056

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2016

Lyle W. Cayce
Clerk

DARRYL J. STERLING,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:11-CV-449

Before CLEMENT, PRADO, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Darryl Sterling, Louisiana prisoner # 306435, seeks a certificate of appealability to appeal the district court's denial of his motion for relief from judgment under Federal Rule of Civil Procedure 60(b).

"This Court must examine the basis of its jurisdiction, on its own motion, if necessary." *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir.1987). A timely notice of appeal is a jurisdictional requirement in a civil case. *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Sterling had 30 days, or until January 15,

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

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2016, to file a timely notice of appeal. *See* Fed. R. App. P. 4(a)(1)(A). He did not file a notice of appeal until after this appeal period expired. He also does not certify that he placed his notice of appeal in the prison mail system “on or before the last day for filing.” Fed. R. App. P. 25(a)(2)(C). Indeed, the certificate of service accompanying Sterling’s notice of appeal states that he placed that notice in the prison mail system on January 18, 2016. Finally, Sterling “filed no motion to excuse the delay under Fed. R. App. P. 4(a)(5).” *Henry v. Estelle*, 688 F.2d 407, 407 (5th Cir. 1982); *see Mann v. Lynaugh*, 840 F.2d 1194, 1198–99 & n.4 (5th Cir. 1988).

Because Sterling did not file a timely notice of appeal, Sterling’s motion for a certificate of appealability is DENIED, and the appeal is DISMISSED for lack of jurisdiction.