

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JAMIE SIMMONS

CIVIL ACTION

VERSUS

NO. 06-2130

N. BURL CAIN, WARDEN

SECTION "C" (4)

ORDER AND REASONS

The United States Fifth Circuit of Appeals tasked this Court with determining, whether from prison mail logs or other evidence, the date on which the petitioner, Jamie Simmons, placed his notice of appeal in the prison mail system. (Rec. Doc. 23). Mr. Simmons dated his notice of appeal June 18, 2008 and it was filed in this Court on June 25, 2008. (Rec. Doc. 19). The pleading was received in an envelope bearing a postal meter date of June 24, 2008. (*Id.*) To be timely, Mr. Simmons' petition must have been filed within 30 days of entry of this Court's order dismissing his petition on May 21, 2008. *See* 28 U.S.C. § 2107(a). (Rec. Doc. 18).

By Order of this Court, both parties were required to submit, no later than October 24, 2008, evidence as to when Mr. Simmons delivered the notice of appeal to prison officials for mailing. (Rec. Doc. 24). Petitioner submitted a notarized affidavit stating that his notice of appeal was "signed and deposited in the Main Prison East Yard Mailbox" on June 18, 2008. Respondent produced evidence that petitioner filled out an "inmate funds withdrawal request" on

June 23, 2008 to mail a document to the Clerk of this Court.

The evidence shows that petitioner did not sign paperwork to pay for mailing his Notice of Appeal until June 23, 2008. His Notice of Appeal was evidently not mailed until after he signed the paperwork, since it was postmarked June 24, 2008. But that evidence does not contradict petitioner's sworn statement that he dropped his Notice of Appeal off at the mailbox on June 18, 2008. No evidence in the record indicates that payment occurs simultaneously with the inmate placing mail in the prison mail system. Indeed, logically payment could only occur later after the mail is retrieved by prison authorities and weighed to determine the amount of postage necessary.

Therefore, based on the petitioner's uncontradicted affidavit, the Court finds his Notice of Appeal was tendered to prison authorities on June 18, 2008, by being deposited in the prison inmate mailbox.

New Orleans, Louisiana, this 10th day of November, 2008.


HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE