

United States Court of Appeals
Fifth Circuit

FILED

August 22, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-11204
Summary Calendar

LEROY B. MEEK,

Plaintiff-Appellant,

versus

LAWRENCE BRACKENS; NFN MCMILLER, Sergeant; NFN DENHAM,
Lieutenant; NFN NORWOOD, Sergeant; NFN KERRY, Sergeant,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:05-CV-40

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*

Leroy B. Meek, Texas prisoner # 505329, appeals the dismissal of his complaint filed under 42 U.S.C. § 1983 for failure to exhaust administrative remedies. Meek had 30 days from the entry of the June 30, 2005, judgment to file a timely notice of appeal. See FED. R. APP. P. 4(a)(1)(A). Meek's pro se August 12, 2005, notice of appeal was untimely. See id.

A district court may grant a defendant an additional 30 days in which to file a notice of appeal upon a showing of excusable

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

neglect or good cause. See FED. R. APP. P. 4(a)(5). Meek's notice of appeal, which was filed within this additional 30-day period, sufficed as a motion under Rule 4(a)(5). See United States v. Golding, 739 F.2d 183, 184 (5th Cir. 1984); see also Houston v. Lack, 487 U.S. 266, 276 (1988) (holding that a notice of appeal submitted by a pro se prisoner is deemed filed on the date the prisoner submits it to prison officials for mailing).

Accordingly, Meek's appeal is held in abeyance, and the case is REMANDED to the district court for a ruling under FED. R. APP. P. 4(a)(5). Upon ruling, the district court shall promptly return the case to this court for dismissal or further proceedings, as may be appropriate.