

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

No. 15-51041
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2016

Lyle W. Cayce
Clerk

KENNETH RAY JOHNSON,

Petitioner–Appellant,

versus

UNITED STATES OF AMERICA,

Respondent–Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:15-CV-241

Before SMITH, CLEMENT, and GRAVES, Circuit Judges.

PER CURIAM:*

Kenneth Johnson, federal prisoner # 38827-177, who was convicted of

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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aiding and abetting the distribution of methamphetamine, appeals the dismissal of his purported 28 U.S.C. § 2241 petition. Johnson failed to file a notice of appeal within 60 days of the entry of the judgment of dismissal. *See* FED. R. APP. P. 4(a)(1)(B)(i). The judgment was entered on August 28, 2015, so the 60th day was October 27, 2015. The notice of appeal was filed the next day, October 28, giving Johnson the benefit of the prison mailbox rule.

Nothing in the notice of appeal can be reasonably construed as a motion for extension of time to appeal based on excusable neglect or good cause. *See* FED. R. APP. P. 4(a)(5). Although the notice of appeal states that the judgment was served on September 21, 2015, it cannot be treated as a motion to reopen the time to appeal based on a claim that Johnson did not receive notice of the entry of judgment within 21 days of entry, *see* FED. R. APP. P. 4(a)(6)(A), because Johnson did not move to reopen within 14 days after receiving notice of the entry.

The time limit for filing a notice of appeal of a civil judgment is jurisdictional, *Bowles v. Russell*, 551 U.S. 205, 208–14 (2007), so we lack jurisdiction to consider the appeal, which is therefore DISMISSED. Johnson's motion for appointment of counsel is DENIED.