

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

No. 16-11825
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 25, 2017

Lyle W. Cayce
Clerk

JAMES DURHAM,

Plaintiff-Appellant

v.

DEE ANDERSON, Sheriff,

Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CV-1027

Before DAVIS, CLEMENT and COSTA, Circuit Judges.

PER CURIAM:*

James Durham appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint pursuant to the screening provisions of 28 U.S.C. § 1915A. Durham alleged that the defendant was liable for injuries he received when he was beaten with a mop handle by another jail inmate.

As a threshold matter, this court must determine whether it has jurisdiction to entertain the appeal. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Cir. 1987). A timely notice of appeal is mandatory and jurisdictional in a civil case. *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

Durham's notice of appeal, which we consider filed no earlier than the date he signed it on December 18, 2016, is untimely from the district court's judgment, which was entered on November 7, 2016. *See* FED. R. APP. P. 4(a)(1)(A) (a party must file a notice of appeal in a civil case within 30 days of the order or judgment). There is no basis to construe his notice of appeal as a motion for extension of time under Federal Rule of Appellate Procedure 4(a)(5). Accordingly, his appeal is dismissed for lack of jurisdiction. *See Bowles*, 551 U.S. at 214. His motion for appointment of counsel is denied.

APPEAL DISMISSED; MOTION DENIED.