

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

No. 17-60638
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
September 6, 2019

Lyle W. Cayce
Clerk

CORDELLRA MCCALEY,

Plaintiff-Appellant

v.

PELICIA HALL, COMMISSIONER, MISSISSIPPI DEPARTMENT OF
CORRECTIONS; JERRY WILLIAMS, Deputy Commissioner; TIMOTHY
MORRIS, Warden, Mississippi Department of Corrections; OFFICER
HUGHES, Correction Officer; M. S. CARTER, Case Manager; MR. BANKS,
Deputy Warden,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:16-CV-111

Before SMITH, DENNIS, and DUNCAN, Circuit Judges

PER CURIAM:*

Cordellra McCaley, Mississippi prisoner # 164032, appeals the summary judgment dismissal of his 42 U.S.C. § 1983 civil rights action alleging claims of deliberate indifference to his safety, deliberate indifference to his serious

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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medical needs, and failure to properly classify him based on the defendants' actions before and after McCaley was assaulted and seriously injured by another inmate. McCaley also moves for appointment of counsel on appeal.

“This [c]ourt must examine the basis of its jurisdiction, on its own motion, if necessary.” *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). An appellate court’s jurisdiction vests upon filing of the notice of appeal. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). “[A]n appeal filing deadline prescribed by statute will be regarded as jurisdictional.” *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 16 (2017) (internal quotation marks and citation omitted). In a civil matter, such as this one, a notice of appeal must be filed within 30 days of the entry of the judgment or order being appealed. 28 U.S.C. § 2107(a); FED. R. APP. P. 4(a)(1)(A).

McCaley’s notice of appeal was untimely filed by more than four months. In a prior order, however, we construed his notice as a motion to reopen the appeal filing period and remanded to the district court for a ruling. *See* § 2107(c); FED. R. APP. P. 4(a)(6). The district court denied the motion and declined to reopen the filing period. Consequently, McCaley’s notice of appeal remains untimely, and we therefore lack jurisdiction over the appeal. *See* § 2107(a); FED. R. APP. P. 4(a)(1)(A); *Hamer*, 138 S. Ct. at 16-17. Accordingly, we DISMISS the appeal for want of jurisdiction. *See Hamer*, 138 S. Ct. at 16. We DENY the motion to appoint counsel.

APPEAL DISMISSED; MOTION TO APPOINT COUNSEL DENIED.