

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JONQUIL THOMAS-WEISNER, AKA
Jonquil Weisner,

Plaintiff-Appellant,

v.

PATRICK COVELLO, Warden; LANCE
ESHelman, Community Resource
Manager,

Defendants-Appellees,

and

CONNIE GIPSON, Warden, Director,
CDCR; M. VOONG, Chief of Appeals,

Defendants.

No. 22-55835

D.C. No. 3:19-cv-01999-JAH-BGS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted November 14, 2023**

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

California state prisoner Jonquil Thomas-Weisner appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging a free exercise claim. We dismiss the appeal for lack of jurisdiction.

We lack jurisdiction to consider Thomas-Weisner's contentions regarding the dismissal of his action because Thomas-Weisner's notice of appeal was untimely as to the underlying judgment. *See* Fed. R. App. P. 4(a)(1)(A) (a notice of appeal must be filed within 30 days after entry of the judgment appealed from); Fed. R. App. P. 4(c)(1) (inmate's notice of appeal is deemed filed when deposited in the institution's internal mail system if accompanied by supporting declaration or evidence). Because Thomas-Weisner's motion for relief under Federal Rule of Civil Procedure 60(b) was filed more than 28 days after the entry of judgment, it did not toll the time to file a notice of appeal. *See* Fed. R. App. R. 4(a)(4)(A)(vi).

To the extent Thomas-Weisner seeks to appeal the district court's denial without prejudice of his Federal Rule of Civil Procedure 60(b) motion, that is not an appealable order. *See Defs. of Wildlife v. Bernal*, 204 F.3d 920, 930 (9th Cir. 2000) (order declining to entertain or grant a Rule 60(b) motion while an appeal is pending is a procedural ruling and not a final determination on the merits).

DISMISSED.