

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of Court

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February 24, 2011

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 11-10476-H
Case Style: In re: Robert Smith, Jr.
District Court Docket No: 3:10-cv-00091-RV-EMT

The enclosed order has been entered.

Sincerely,

JOHN LEY, Clerk of Court

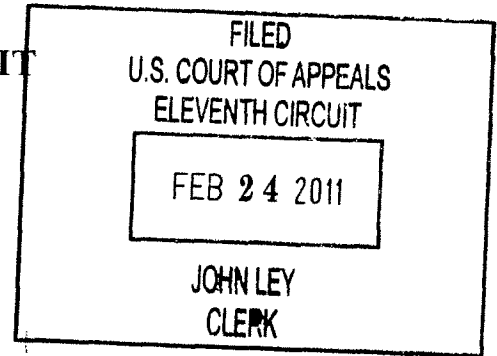
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Phone #: (404) 335-6186

MP-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-10476-H



In re: ROBERT P. SMITH, JR.,

Petitioner.

On Petition for Writ of Mandamus to the United States
District Court for the Northern District of Florida

BEFORE: BLACK and WILSON, Circuit Judges.

BY THE COURT:

Before the Court is "Appellant's Emergency Motion for an Order Implementing. . .," which is construed as a petition for writ of mandamus.

On February 2, 2011, the district court directed the district court clerk to return, unfiled, Petitioner's notice of appeal and appellate filing fee. Petitioner seeks to have this Court direct Respondents to enter his notice of appeal on the docket and transmit the notice to this Court.

A district court has a ministerial duty to forward to the proper court of appeals any notice of appeal that is filed. See Fed.R.App.P. 3(d); Dickerson v. McClellan, 37 F.3d 251, 252 (6th Cir. 1994). District courts cannot dismiss an

appeal based on a perceived defect.¹ See Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998); Dickerson, 37 F.3d at 252; Camby v. Davis, 718 F.2d 198, 200 n.2 (4th Cir. 1983); Hogg v. United States, 411 F.2d 578, 580 (6th Cir. 1969); Liles v. South Carolina Dep't of Corr., 414 F.2d 612, 614 (4th Cir. 1969).

In light of these well-established principles, Respondents, including the District Judge, are directed to file a response to the petition for writ of mandamus within 14 days of the date of this order. See Fed. R. App. P. 21(b).

¹ After a notice of appeal is transmitted, this Court addresses any issues regarding, *inter alia*, appellate jurisdiction, standing, and/or the merits.