

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**DERRICK N. JOHNSON**

**CIVIL ACTION**

**VERSUS**

**NO. 14-1645**

**N. BURL CAIN**

**SECTION "C"**

**FINDINGS OF FACT**

On April 23, 2014, the U.S. Court of Appeals for the Fifth Circuit issued a limited remand to allow this Court to determine whether petitioner, Derrick N. Johnson, timely filed his notice of appeal. Rec. Doc. 25. The Court subsequently held an evidentiary hearing on the briefs and without oral argument on this matter. Rec. Doc. 26. The Court further ordered that the respondent provide the Court with prisoner mail records and, if applicable, email logs for the dates of January 15, 2015 to February 27, 2015. *Id.*

Pursuant the Court's order, respondent provided a statement from Lieutenant Cindy Vannoy, the Mail and Package Department Supervisor for the Louisiana State Penitentiary. Rec. Doc. 31-1. Lieutenant Vannoy states that the logs of outgoing mail for the dates specified as well as the computer log for indigent mail debits do not show that Johnson used the Indigent Mail

System and also do not show that Johnson elected to certify outgoing mail from January 15, 2014 to February 27, 2015. Documents submitted with Lieutenant Vannoy's statement confirm these assertions. Johnson did not submit briefing on the issue.

The Court concludes that Johnson did not timely file his notice of appeal. Respondent has shown that Johnson did not send mail through the Indigent Mail Program and did not send certified mail in the month prior to February 20, 2015, which was the last day for filing a timely notice of appeal. Although respondents' records do not rule out the possibility that Johnson could have sent an uncertified letter without the use of the Indigent Mail Program, the Court infers from Johnson's silence that this did not occur. Thus, the Court determines that Johnson did not mail his notice of appeal during the period from January 15, 2014 to February 27, 2015, and that the notice of appeal was not deposited in the institution's internal mail system on or before February 20, 2015. The Court hereby returns this matter to the circuit court for further proceedings.

New Orleans, Louisiana this 21st day of July 2015.

  
HELEN G. BERRIGAN  
UNITED STATES DISTRICT JUDGE