

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

TYROWONE LOUIS KIMBLE

PLAINTIFF

V.

CIVIL ACTION NO. 3:18-CV-00038-NBB-RP

COFFEEVILLE POLICE DEPT., et al.

DEFENDANTS

ORDER

This matter comes before the Court upon the Fifth Circuit Court of Appeals' order remanding this case for a determination as to the filing date of the plaintiff's notice of appeal. *See* Doc. # 134. In particular, the Fifth Circuit has directed this Court to determine whether the plaintiff's notice of appeal was filed *on or before* the filing deadline. *Id.* This Court entered an opinion and order dismissing the instant case on October 9, 2019. Doc. # s 125, 126. The plaintiff's notice of appeal, therefore, was due on or before November 8, 2019. *See* Fed. R. App. P. 4(a)(1)(A).

A prisoner's *pro se* notice of appeal is timely filed if deposited in the correctional institution's internal mail system on or before the last day of filing. *See* Fed. R. App. P. 4(c)(1); *see also* *Spotville v. Cain*, 149 F.3d 374, 376-78 (5th Cir. 1998) (citing *Houston v. Lack*, 487 U.S. 266 (1988)). The plaintiff signed the notice of appeal on November 1, 2019, but it was not stamped as "filed" in this Court until November 14, 2019. The envelope in which the submission was mailed shows a postmark date of November 12, 2019, just a few days after the filing deadline. There is often a significant delay between a prisoner's submission of legal documents for mailing and the time the institution processes and actually mails them to the courts. Upon due consideration, the Court finds that the plaintiff presented his notice of appeal to prison officials for mailing *before* the filing deadline.

Therefore, it is hereby **ORDERED**:

- 1) That the plaintiff's notice of appeal was deposited to prison officials on the date it was signed, November 1, 2019; and
- 2) That the Clerk of Court is **DIRECTED** to transfer this case back to the Fifth Circuit Court of Appeals for further proceedings as may be appropriate.

This, the 18th day of May, 2020.

/s/ Neal Biggers

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE