

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41451
(Summary Calendar)

VERNON JACKSON,

Plaintiff-Appellant,

versus

DEFENDANTS, Unidentified,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
(6:97-CV-556)

- - - - -
January 7, 1999

Before JOLLY, SMITH, and WIENER, Circuit Judges:

PER CURIAM:*

Plaintiff-Appellant Vernon Jackson seeks leave to file an out-of-time appeal of the district court's dismissal, pursuant to 42 U.S.C. § 1997e(a), of his civil rights complaint for failure to exhaust administrative remedies. We must examine the basis of our own jurisdiction if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). On remand from this court, the magistrate judge confirmed that Jackson's notice of appeal was filed more than 30 days after the entry of judgment. It is therefore untimely. As Jackson does not contend that he did not receive timely notice of

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

entry of the final judgment, and as he did not file his request for an out-of-time appeal until after the 30-day period expired, there is no statutory basis for allowing him an out-of-time appeal. See Fed. R. App. P. 4(a)(5) and (6). Jackson's motion for leave to file an out-of-time appeal is DENIED, and his appeal is DISMISSED for lack of jurisdiction. See Fed. R. App. P. 4(a)(1); *Mosley*, 813 F.2d at 660. Jackson's request for appointment of counsel is DENIED.

MOTIONS DENIED; APPEAL DISMISSED.