

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10645

MACK ORAN HILL,

Plaintiff - Appellant

v.

TRAVIS SCOTT WARE,

Defendant - Appellee

Appeal from the United States District Court for the
Northern District of Texas, Dallas

May 31, 2001

Before: KING, Chief Judge, JOLLY, and PARKER, Circuit Judges.

CAROLYN DINEEN KING, Chief Judge:

Mack Oran Hill, a Texas death-row inmate with an execution date of June 6, 2001, filed a pro se civil rights lawsuit against the prosecutor at his capital murder trial, alleging various acts of prosecutorial misconduct. The district court dismissed the case for failure to state a claim on which relief may be granted. Although no briefing schedule has been set, Hill also requests a 30 day extension of time to file his brief.

This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). Final judgment was entered in this case on April 10, 2001. The date on the "verification" in Hill's notice of appeal is May 11, 2001, and the certificate of service is dated May 12, 2001.

Rule 4(a)(1)(A), Fed. R. App. P., requires that the notice of appeal in a civil case be filed within 30 days of entry of the judgment or order appealed from. In the case of an inmate, the notice is timely if it is deposited in the prison mail system on or before the last day for filing. Rule 4(c)(1). Hill's notice of appeal shows on its face that it could not have been put in the prison mail system within the time allowed. The time limitation for filing a notice of appeal is jurisdictional, and the lack of a timely notice mandates dismissal of the appeal. Mann v. Lynaugh, 840 F.2d 1194, 1197 (5th Cir. 1988).

APPEAL DISMISSED, MOTION FOR EXTENSION OF TIME TO FILE BRIEF DENIED AS MOOT.