

November 3, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-21049  
Summary Calendar

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DAVID LUKE,

Plaintiff-Appellant,

versus

SERGEANT PARKER, Baytown Police Department;  
CARL WATERS, JR.; DR. JOSEPH PERAINO; DR. SEAL,  
Harris County Medical Supervisor; DEPUTY T. TORRIS;  
DEPUTY J.H. SHANNON; DEPUTY RONNIE BREWER;  
DEPUTY AL TRAPEANO; DEPUTY DAVIS; DEPUTY DOYLE,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4-01-CV-2658  
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Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:\*

David Luke, Texas prisoner # 797148, moves for the appointment of counsel in his appeal from the grant of summary judgment in favor of the defendants in his civil rights suit. 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). A timely notice of appeal is a prerequisite to the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

exercise of jurisdiction by this court. Dison v. Whitley, 20 F.3d 185, 186 (5th Cir. 1994). Because Luke did not file a timely notice of appeal, this court lacks jurisdiction over the appeal. Id.; FED. R. APP. P. 4(a)(1)(A).

Luke's motion for the appointment of counsel is DENIED, and the appeal is DISMISSED for lack of jurisdiction.