

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 17, 2013

Lyle W. Cayce
Clerk

No. 12-41210
Summary Calendar

JOHN A. VALLAIR, III,

Plaintiff-Appellant

v.

MITCH WOOD, Sheriff; UP HAYES, MD; UP VEGA, Officer, Law Library; UP
MINTOR, Lieutenant; UP DUBUIS, Captain; UP MILLS, Lieutenant,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:08-CV-388

Before WIENER, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant John A. Vallair, III, Texas prisoner # 1690304, appeals the district court's judgment that dismissed his 42 U.S.C. §1983 complaint pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim. Vallair urges that his complaint was wrongly dismissed and seeks to have his claims reconsidered by the district court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-41210

We must examine the basis of our jurisdiction, sua sponte if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). A timely notice of appeal is a jurisdictional requirement in a civil case. *Bowles v. Russell*, 551 U.S. 205, 213-14 (2007). Within thirty days following entry of judgment on September 23, 2011, Vallair filed a “Petition to Appeal Order,” which was treated as a timely notice of appeal and docketed in this court. Vallair subsequently dismissed that appeal voluntarily, however, and did not file another notice of appeal until October 22, 2012. It was untimely with respect to the underlying judgment, and there were no other appealable orders in the case. Therefore, the latter appeal is DISMISSED for lack of appellate jurisdiction. *Bowles*, 551 U.S. at 213-14.