

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

United States Court of Appeals
Fifth Circuit

FILED

March 8, 2019

Lyle W. Cayce
Clerk

No. 17-30603
Summary Calendar

CLIFTON JOHN ALLEN,

Petitioner-Appellant

v.

JEFF WINDHAM, WARDEN, LASALLE PARISH CORRECTIONAL
CENTER,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:16-CV-156

Before BENAVIDES, HIGGINSON, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Clifton John Allen, Louisiana prisoner # 209546, was sentenced in 2012 to 15 years of imprisonment following his guilty plea to aggravated criminal property damage. In 2016, he filed a 28 U.S.C. § 2254 petition, which the district court denied as time barred. We granted a certificate of appealability

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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(COA) with respect to the district court's procedural ruling, and we additionally raised the issue of the timeliness of Allen's notice of appeal.

We examine the timeliness of the notice of appeal first because it implicates our appellate jurisdiction. A § 2254 proceeding is civil in nature, *see Archer v. Lynaugh*, 821 F.2d 1094, 1096 (5th Cir. 1987), and a timely notice of appeal in a civil case is a jurisdictional prerequisite where, as here, the time limit is set by statute, *see Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 16-17 (2017); 28 U.S.C. § 2107(a); *accord Hernandez v. Thaler*, 630 F.3d 420, 424 (5th Cir. 2011). Although we must always be assured of our jurisdiction and must raise it sua sponte, the appellant has the burden to establish appellate jurisdiction. *See SCF Waxler Marine, L.L.C. v. ARIS T M/V*, 902 F.3d 461, 464 (5th Cir. 2018); *see also Kinsley v. Lakeview Regional Medical Center LLC*, 570 F.3d 586, 588-89 (5th Cir. 2009). We need not consider grounds for appellate jurisdiction that the appellant has not raised. *See SCF Waxler Marine*, 902 F.3d at 464; *see also Prewitt v. City of Greenville*, 161 F.3d 296, 298 n.4 (5th Cir. 1998).

The document treated as Allen's notice of appeal was filed more than 30 days after the district court's entry of the final order in the § 2254 proceeding. *See* FED. R. APP. P. 4(a)(1)(A); Rule 11(b), Rules Governing § 2254 Cases; § 2107(a). Even with the benefit of liberal construction of his brief, Allen has not articulated any basis for construing that document, or any other document, as a timely filed notice of appeal.

First, Allen does not articulate an argument that the district court failed to comply with Federal Rule of Civil Procedure 58(a) in any manner implicating the timeliness of his notice of appeal. *See generally* FED. R. APP. P. 4(a)(7); *United States v. Perez*, 736 F.2d 236, 237-38 (5th Cir. 1984). Second, we agree with the Ninth Circuit's reasoning in *United States v. Suesue*, 584 F.

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App'x 705, 706 (9th Cir. 2014), that the district court's denial of a COA months after it entered the final order in the § 2254 proceeding is irrelevant to the calculation of the time to file the notice of appeal pursuant to Rule 4(a). Allen advances no other argument for the exercise of appellate jurisdiction in this case, and we perceive none.

Accordingly, this appeal is **DISMISSED** for lack of jurisdiction.